

STATE OF MICHIGAN
IN THE SUPREME COURT

WAYNE COUNTY,
Plaintiff/Appellee,

v

Supreme Court No. 124070
Court of Appeals No. 239438
Wayne Circuit Court No. 01-113583-CC

EDWARD HATHCOCK,
Defendant/Appellant.

WAYNE COUNTY,
Plaintiff/Appellee,

v

Supreme Court No. 124071
Court of Appeals No. 239563
Wayne Circuit Court No. 01-114120-CC

AARON T. SPECK and
DONALD E. SPECK, individuals,
Defendants/Appellants.

WAYNE COUNTY,
Plaintiff/Appellee,

v

Supreme Court No. 124072
Court of Appeals No. 240184
Wayne Circuit Court No. 01-113584-CC

AUBINS SERVICE, INC., DAVID R. YORK,
Trustee, David R. York Revocable Living Trust,
Defendants/Appellants.

WAYNE COUNTY,
Plaintiff/Appellee,

v

Supreme Court No. 124073
Court of Appeals No. 240187
Lower Court No. 01-113587-CC
01-114116-CC
01-114118-CC
01-114127-CC

JEFFREY J. KOMISAR,
Defendant/Appellant.

MICHIGAN MUNICIPAL LEAGUE'S

BRIEF AS AMICUS CURIAE

WAYNE COUNTY,
Plaintiff/Appellee,

v

ROBERT WARD and LELA WARD,
Defendants/Appellants,
and

HENRY Y. COOLEY,
Defendant.

Supreme Court No. 124074
Court of Appeals No. 240189
Wayne Circuit Court No. 01-114113-CC

WAYNE COUNTY,
Plaintiff/Appellee,

v

MRS. JAMES GRIZZLE and
MICHAEL A. BALDWIN,
Defendants/Appellants,

and

RAMIE FAKHOURY,
Defendant.

Supreme Court No. 124075
Court of Appeals No. 240190
Wayne Circuit Court No. 01-114115-CC

WAYNE COUNTY,
Plaintiff/Appellee,

v

STEPHANIE A. KOMISAR,
Defendant/Appellant.

Supreme Court No. 124076
Court of Appeals No. 240193
Wayne Circuit Court No. 01-114122-CC

WAYNE COUNTY,
Plaintiff/Appellee,

v

THOMAS L. GOFF, NORMA GOFF,
MARK A. BARKER, JR. and
KATHLEEN A. BARKER,
Defendants/Appellants.

Supreme Court No. 124077
Court of Appeals No. 240194
Wayne Circuit Court No. 01-114123-CC

WAYNE COUNTY,
Plaintiff/Appellee,

v

VINCENT FINAZZO,
Defendant/Appellant,

and

AUBREY L. GREGORY and DULCINA GREGORY,
Defendants.

Supreme Court No. 124078
Court of Appeals No. 240195
Wayne Circuit Court No. 01-114124-CC

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF JURISDICTION.....	viii
STATEMENT OF QUESTIONS INVOLVED.....	ix
LIST OF APPENDICES.....	xi
INTRODUCTION	1
STATEMENT OF FACTS	1
I. WAYNE COUNTY, AS A PUBLIC CORPORATION, MAY RELY SOLELY ON MCL 213.23 IN EXERCISING THE LEGAL AUTHORITY TO TAKE PRIVATE PROPERTY FOR A PUBLIC PURPOSE.....	5
A. Standard Of Review.....	5
B. The Textual Meaning of MCL 213.23	5
C. Public Corporations And State Agencies Do Not Need Adjunct Authority to Take Property Pursuant to MCL 213.23	9
D. MCL 213.23 Applied.....	12
II. THE TAKINGS IN THIS CASE ARE CONSTITUTIONAL BECAUSE THEY ARE BOTH FOR A PUBLIC PURPOSE AND NECESSARY	16
III. <i>POLETOWN</i> AND THE PUBLIC PURPOSE TEST SUPPORT THE OUTCOME IN THIS CASE AND ARE CONSISTENT WITH THE CONSTITUTIONAL LIMITS ON THE POWER OF EMINENT DOMAIN	17
A. Standard Of Review.....	18
B. <i>Poletown</i> Overview.....	18
C. Courts Defer To Legislative Policy Choices	19
D. <i>Poletown</i> Mandates That Public Purpose Be Determined Under The Clear And Significant Standard, Which Should Be Upheld Because It Is Both Easy To Apply And Effective In Identifying Constitutional Takings	24
E. Public Purpose Is A Flexible Concept And <i>Poletown's</i> Conclusion That Economic Development Can Serve As A Valid Public Purpose For A Taking Finds Ample Support In Other Opinions.....	30
IV. IF THE COURT OVERRULES POLETOWN, THE DECISION SHOULD BE GIVEN ONLY PROSPECTIVE EFFECT	36
V. CONCLUSION.....	38

TABLE OF AUTHORITIES

FEDERAL CASES

	Page
<i>Berman v Parker</i> , 348 US 26; 75 S Ct 98; 99 L Ed 27 (1954).....	22, 32
<i>Daniels v Area Plan Com'n of Allen Co</i> , 306 F3d 445 (2002).....	22
<i>Hawaii Housing Auth v Midkiff</i> , 467 US 229, 241-242; 104 S Ct 2321; 81 L Ed 2d 186 (1984))	29
<i>United States ex rel Tennessee Valley Authority v 544 Acres of Land, More or Less, in Franklin Co, Tennessee</i> , 314 F Supp 273 (ED Tenn 1969))	33
<i>United States ex rel Tennessee Valley Authority v Two Tracts of Land Containing a Total of 146.6 Acres, More or Less, in Loudon Co, Tennessee</i> , 532 F2d 1083 (CA 6, 1976)	32
<i>United States ex rel and for Use of Tennessee Valley Authority v Easement and Right-of-Way over 1.8 Acres of Land, More or Less, in Maury Co, Tennessee</i> , 682 F Supp 353, 358 (MD Tenn 1988))	33
<i>United States ex rel Tennessee Valley Authority v Welch</i> , 327 US 546; 66 S Ct 715; 90 L Ed 843 (1946).....	22, 33

STATE CASES

<i>Adams Outdoor Advertising, Inc v City of Holland</i> , 234 Mich App 681; 600 NW2d 339 (1999).....	15
<i>Atlas Valley Golf & Country Club, Inc v Village of Goodrich</i> , 227 Mich App 14; 575 NW2d 56 (1997).....	13
<i>In re Bd of Education of City of Detroit</i> , 242 Mich 658; 219 NW 614 (1928).....	11
<i>Burke v City of River Rouge</i> , 240 Mich 12; 215 NW 18 (1927).....	11
<i>Chandler v Co of Muskegon</i> , 467 Mich 315; 652 NW2d 224 (2002).....	5

<i>Cipri v Bellingham Frozen Foods, Inc,</i> 235 Mich App 1; 596 NW2d 620 (1999).....	21
<i>City of Center Line v Chmelko,</i> 164 Mich 251; 416 NW2d 401 (1987).....	26, 29, 35
<i>City of Detroit v Lucas,</i> 180 Mich App 47; 446 NW2d 596 (1989).....	14, 27
<i>City of Detroit v Michigan Railroad Com'n,</i> 209 Mich 395, 423; 177 NW 306 (1920).....	27
<i>City of Grand Rapids v Grand Rapids & IR Co,</i> 66 Mich 42; 33 NW 15 (1887).....	1, 27
<i>City of Lansing v Edward Rose Realty, Inc,</i> 442 Mich 626; 502 NW2d 638 (1993).....	1, 5, 15, 29
<i>Com'n of Conservation of Dep't of Conservation v Hane,</i> 248 Mich 473; 227 NW 718 (1929).....	11
<i>Daniel v Dep't of Corrections,</i> 468 Mich 34; 658 NW2d 144 (2003).....	21
<i>In re FAI-75 Expressway in City of Detroit, Wayne Co,</i> 4 Mich App 496; 145 NW2d 223 (1966), quoting <i>Toledo AA & GTR v</i> <i>Dunlap</i> , 47 Mich 456, 11 NW 271 (1888).....	23
<i>In re Gallagher Ave in City of Hamtramck,</i> 300 Mich 309; 1 NW2d 553 (1942).....	6, 7
<i>Gregory Marina, Inc v City of Detroit,</i> 378 Mich 364; 144 NW2d 503 (1966).....	<i>passim</i>
<i>Hadfield v Oakland Co Drain Com'r,</i> 430 Mich 139; 422 NW2d 205 (1988))	36
<i>Haliw v Sterling Heights,</i> 464 Mich 297; 627 NW2d 581 (2001).....	5
<i>In re Harper Ave,</i> 237 Mich 684; 213 NW 74 (1927).....	14
<i>Hofmann v Auto Club Ins Ass'n,</i> 211 Mich App 55; 535 NW2d 529 (1995).....	7
<i>In re John C Lodge Highway, City of Detroit,</i> 340 Mich 254; 65 NW2d 820 (1954).....	11

<i>Koontz v Ameritech Services, Inc,</i> 466 Mich 304; 645 NW2d 34 (2002).....	6
<i>Levy v Martin,</i> 463 Mich 478; 620 NW2d 292 (2001).....	21
<i>Lucas v Wayne Co Election Com'n,</i> 146 Mich App 742; 381 NW2d 806 (1985).....	14
<i>Marion v City of Detroit,</i> 284 Mich 476; 280 NW 26 (1938).....	11
<i>Michigan State Highway Comm v Vanderkloot,</i> 392 Mich 159; 220 NW2d 416 (1974).....	9
<i>Nelson Drainage Dist v Filippis,</i> 174 Mich App 400; 436 NW2d 682 (1989).....	17
<i>New Products Corp v Ziegler,</i> 352 Mich 73; 88 NW2d 528 (1958).....	26
<i>O'Donnell v State Farm Mut Automobile Ins Co,</i> 404 Mich 524; 273 NW2d 829 (1979).....	20
<i>O'Hara v Wayne Co Clerk,</i> 238 Mich App 611; 607 NW2d 380 (1999).....	14, 15
<i>Oakland Bd of Co Road Com'rs v Michigan Property & Casualty Guaranty Ass'n,</i> 456 Mich 590; 575 NW2d 751 (1998).....	21
<i>Omelenchuk v City of Warren,</i> 466 Mich 524; 647 NW2d 493 (2002).....	12
<i>Paul v City of Detroit,</i> 32 Mich 108 (1875).....	21
<i>People ex rel Sutherland v Governor,</i> 29 Mich 320 (1874)	20
<i>People v Doyle,</i> 451 Mich 93; 545 NW2d 627 (1996).....	38
<i>People v Frohriep,</i> 247 Mich App 692; 637 NW2d 562 (2001).....	27
<i>People v Pasha,</i> 466 Mich 378; 645 NW2d 275 (2002).....	38

<i>People v Wright</i> , 408 Mich 1; 289 NW2d 1 (1980).....	28
<i>Petition of Bd of Education of City of Detroit</i> , 239 Mich 46; 214 NW 239 (1927).....	11
<i>Petition of City of Detroit to Condemn Lands</i> , 280 Mich 708; 274 NW 375 (1937).....	11
<i>Petition of Huron-Clinton Metropolitan Authority</i> , 306 Mich 373; 10 NW2d 920 (1943).....	12, 23
<i>Pohutski v City of Allen Park</i> , 465 Mich 675; 641 NW2d 219 (2002).....	36, 37
<i>Poletown Neighborhood Council v Detroit</i> , 410 Mich 616; 304 NW2d 455 (1981).....	<i>passim</i>
<i>Proctor v White Lake Twp Police Dep't</i> , 248 Mich App 457; 639 NW2d 332 (2001).....	21
<i>Sabaugh v City of Dearborn</i> , 384 Mich 510; 185 NW2d 363 (1971).....	13
<i>Silver Creek Drain Dist v Extrusions Div, Inc</i> , 468 Mich 367, 373; 663 NW2d 436 (2003).....	23
<i>Sinas v City of Lansing</i> , 382 Mich 407; 170 NW2d 23 (1969).....	26
<i>In re Shum Clearance in City of Detroit</i> , 331 Mich 714; 50 NW2d 340 (1951).....	26
<i>Smith v Cliffs on the Bay Condominium Ass'n</i> , 463 Mich 420; 617 NW2d 536 (2000).....	21
<i>Smith v Milton School Dist No 2</i> , 40 Mich 143 (1879).....	23
<i>Swan v Williams</i> , 2 Mich 427 (1852)	<i>passim</i>
<i>Tebo v Havlik</i> , 418 Mich 350, 364; 343 NW2d 181 (1984).....	38
<i>Toledo AA & GTR v Dunlap</i> , 47 Mich 456, 462; 11 NW 271 (1888).....	23

<i>Tolksdorf v Griffith</i> , 464 Mich 1, 10; 626 NW2d 163 (2001).....	29
<i>Trent v Suburban Mobility Authority for Regional Transp</i> , 252 Mich App 247; 651 NW2d 171 (2002).....	18
<i>Union School Dist of City of Jackson v Starr Commonwealth for Boys</i> , 322 Mich 165; 33 NW2d 807 (1948).....	11, 24
<i>VanGessel v Lakewood Public Schools</i> , 220 Mich App 37; 558 NW2d 248 (1996).....	10
<i>Wayne Co Bd of Com'rs v Wayne Co Airport Authority</i> , 253 Mich App 144; 658 NW2d 804 (2002).....	14
<i>Weakland v Toledo Engineering Co, Inc</i> , 467 Mich 344; 656 NW2d 175 (2003).....	5, 6
<i>Weitzel v City of Fordson</i> , 244 Mich 559; 222 NW 113 (1928).....	11
<i>Western Michigan Univ Bd of Trustees v Slavin</i> , 381 Mich 23; 158 NW2d 884 (1968).....	11
<i>Wing v Warner</i> , 2 Doug 288 (1846).....	21

FEDERAL STATUTES

16 USC 831.....	<i>passim</i>
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STATE STATUTES

MCL 45.3.....	15
MCL 125.601 <i>et seq</i>	19
MCL 125.1601 <i>et seq</i>	37
MCL 125.1651 <i>et seq</i>	37
MCL 125.2801 <i>et seq</i>	37
MCL 141.101 <i>et seq</i>	13
MCL 141.103(b)	13

MCL 213.21 <i>et seq</i>	3
MCL 213.22	9, 12
MCL 213.23	<i>passim</i>
MCL 691.1407	36, 37
MCR 2.613(C)	17

OTHER AUTHORITY

<i>Appeal of City of Keene,</i> 141 NH 797, 802; 693 A2d 412 (1997)	8
<i>Appeal of Cheney,</i> 130 NH 589, 595; 551 A2d 164 (1988)	8
<i>City of Duluth v State,</i> 390 NW2d 757 (Minn 1986).....	35
<i>City of Las Vegas Downtown Redevelopment Agency v Pappas,</i> 76 P3d 1 (2003).....	35
<i>General Bldg Contractors, LLC v Bd of Shawnee Co Com'rs,</i> 275 Kan 525, 540; 66 P3d 873 (2003)	35
<i>Pair Development Co, Inc v City of Atlanta,</i> 144 Ga App 239, 241; 240 SE2d 897 (1977).....	8
<i>People v Bd of Health of City of New York,</i> 20 How Pr 458; 12 Abb Pr 88; 33 Barb 344 (NY Sup General Term 1861).....	23
<i>Town of Vidalia v Unopened Succession of Ruffin,</i> 663 So 2d 315, 319 (La App 3 Cir 1995)	34, 35
1911 PA 149	8, 10, 14, 16
Const 1963, art 7, §34.....	14, 15, 16
Const 1963, art 10, §2	23, 29, 37

STATEMENT OF JURISDICTION

The Michigan Municipal League does not contest this Court's jurisdiction.

STATEMENT OF QUESTIONS INVOLVED

I. Whether Wayne County, as a public corporation, may rely solely on MCL 213.23 in exercising the legal authority to take private property for a public purpose?

Trial Court Answers: Yes.

Plaintiff Answers: Yes.

Defendants Answer: No.

Amicus Curiae Answers: Yes.

II. Whether the takings in this case are constitutional because they are both for a public purpose and necessary?

Trial Court Answers: Yes.

Plaintiff Answers: Yes.

Defendants Answer: No.

Amicus Curiae Answers: Yes.

III. Whether *Poletown* and the public purpose test support the outcome in this case and are consistent with the constitutional limits on the power of eminent domain?

Trial Court Answers: Yes.

Plaintiff Answers: Yes.

Defendants Answer: No.

Amicus Curiae Answers: Yes.

IV. Whether any decision in this case affecting the validity of *Poletown* and the public purpose test should be applied prospectively only?

Trial Court Answers: N/A.

Plaintiff Answers: Yes.

Defendants Answer: No.

Amicus Curiae Answers: Yes.

LIST OF APPENDICES

Appendix	Description
A	<i>Wayne Co v Hathcock</i> , unpublished opinion per curiam of the Court of Appeals, issued April 24, 2003 (Docket Nos. 239438, 239563, 240184, 240187, 240189, 240190, 240193, 240194, 240195)
B	Resolution of Necessity and Certification
C	Trial Court Opinion
D	Wayne County Charter

INTRODUCTION

The Michigan Municipal League (the League) is a non-profit Michigan corporation with the purpose of improving municipal government and administration. The League represents hundreds of cities and villages from every geographic region in the state of Michigan, most of whom have the need to take private property for a public purpose at times. The League offers this brief as *amicus curiae* in the hope that it will assist the Court in considering the issues related to the power of eminent domain this appeal presents.

STATEMENT OF FACTS

This case concerns the condemnation of private property adjacent to the Detroit Metropolitan Wayne County Airport (“Detroit Metro”). See Appendix A, *Wayne Co v Hathcock*, unpublished opinion per curiam of the Court of Appeals, issued April 24, 2003 (Docket Nos. 239438, 239563, 240184, 240187, 240189, 240190, 240193, 240194, 240195), O’Connell slip op at 4. In the 1990s, Plaintiff Wayne County made plans to expand Detroit Metro. *Id.* In order to mitigate the effects of expanding Detroit Metro, including increased noise, the Federal Aviation Administration provided Wayne County with funds to purchase property adjacent to this new area of development “conditioned on the requirement that plaintiff make the property economically viable.” *Id.* Wayne County determined that the property it acquired could be used to develop an “aeropark” with facilities and services for business, technology, industry, and conferences. *Id.* This aeropark, known as the Pinnacle Project, was expected to have a significant economic effect in Wayne County, providing thousands of jobs and millions of dollars in tax revenue. *Id.* Once established, Pinnacle Park was also projected to draw more enterprises to Wayne County, thereby further enhancing the economic environment. *Id.*

Wayne County approached the individual property owners of the largely undeveloped 1,300 acres of land situated in Huron Charter Township and the City of Romulus that was slated to become

Pinnacle Park. Appendix A, O'Connell slip op at 4. The vast majority of the property owners sold their land to Wayne County voluntarily. *Id.* Defendants, however, refused to sell their property, which represented approximately two percent of the total acreage of Pinnacle Park. *Id.* Defendants' individual parcels of property could not, as a practical matter, be excluded from Pinnacle Park. *Id.* at 7, n 7. Accordingly, the Wayne County Commission adopted a Resolution of Necessity and Declaration of Taking for Defendants' property. *Id.* at 4; Appendix B.

The Resolution of Necessity described the Pinnacle Project as a "mixed use business park, with the focus being the development of light manufacturing and research and development facilities and open use land," and stated that it was "necessary" for Wayne County "to acquire approximately 1,200 acres of property within the" proposed site to construct the Pinnacle Project. Appendix B, p 1. Wayne County emphasized that it was "necessary to take the private property" that was the subject of the resolution to develop the Pinnacle Project. *Id.* at 2; see *id.* at 3. The taking was also "in the public interest" and was for the nine "public purposes" identified in the resolution:

- (a) The creation of jobs for all segments of the Wayne County work force, including the establishment of work force participation standards, requirements, procedures and mechanisms which assure that workers from economically distressed areas of the County shall have an equal opportunity for jobs made available by the Project and by similar projects which are enabled by the Project;
- (b) The diversification of investment and business opportunities for all segments of the County's business community;
- (c) The stimulation of private investment and redevelopment in the County to insure a healthy and growing tax base so that the County can fund and deliver other critical public services;
- (d) Stemming the past tide of population loss and disinvestment;
- (e) Supporting development opportunities that would otherwise remain unrealized;
- (f) Development of public recreational facilities and open use lands;

(g) The construction, improvement and maintenance of public roads and highways;

(h) The construction, improvement and maintenance of storm drainage ditches and other storm drainage facilities;

(i) The construction of facilities which will directly assist in allowing the expansion of Detroit Metropolitan Wayne County Airport, including without limitation, the construction of Runway 4/22. [*Id.* at 2-3.]

Wayne County indicated that it would be relying on several statutes for authority to take the property, including MCL 213.21 *et seq.* *Id.* at 1-2.

After Wayne County filed condemnation complaints, Defendants challenged the necessity of the takings. Appendix A, O'Connell slip op at 4-5. Defendants argued that MCL 213.21 *et seq.*, alone, did not grant Wayne County the authority to take their property, that the Pinnacle Project was speculative, that Wayne County did not need to acquire their land for the Pinnacle Project, and that Wayne County was not taking their property for a public purpose. Appendix C, p 1. Wayne County countered that it had authority under MCL 213.23 to take Defendant's property because the property was necessary for the Pinnacle Project, the Pinnacle Project was not speculative, and the Pinnacle Project was for a public purpose. *Id.* at 4-5, 16, 30-34.

The trial court agreed with Wayne County, and rejected each of Defendants' arguments. The trial court concluded that MCL 213.23 granted Wayne County the authority "to take private property necessary 'for public purposes within the scope of its power for the use or benefit of the public.'" Appendix C, p 15. The trial court determined that Defendants' property was necessary to Pinnacle Park, Pinnacle Park was not a speculative venture, Wayne County was not merely stockpiling property, and the only obstacle to completing the development was the acquisition of Defendants' property. *Id.* at 15-21. Finally, even though it applied "heightened scrutiny," the trial court concluded that the evidence demonstrated the taking was for a public purpose. *Id.* at 30-35.

The Court of Appeals affirmed the trial court. Appendix A. Judge O'Connell agreed that MCL 213.23 provided Wayne County with the authority to condemn property, that Defendants' property was necessary for the Pinnacle Project, and that the Pinnacle Project was for a public purpose even when viewed under heightened scrutiny. Appendix A, O'Connell slip op at 6, 7, 11. Judge Murray concurred in Judge O'Connell's reasoning and result because, he explained, *Poletown Neighborhood Council v Detroit*, 410 Mich 616; 304 NW2d 455 (1981) compelled that reasoning and result. Appendix A, Murray slip op at 4. However, Judge Murray stated in his opinion that he believed that *Poletown's* essential holding that economic benefits from private development could serve a public purpose was incorrect. *Id.* While Judge Murray acknowledged the extraordinary financial pressures Detroit was facing at the time the Supreme Court decided *Poletown*, he noted that there was no evidence on the record in this case to suggest that Wayne County was facing a similarly catastrophic economic situation. *Id.* at 5. Judge Fitzgerald concurred with Judge Murray, suggesting that he also believed that Judge O'Connell had reached the correct conclusion under existing precedent, but that *Poletown* had been wrongly decided. Appendix A, Fitzgerald slip op.

Having failed to persuade the Court of Appeals to overturn the trial court, Defendants have now appealed to this Court, advancing the same core arguments they have made in the trial court and the Court of Appeals in their application for leave to appeal. On November 17, 2003, this Court granted the application for leave to appeal, directing the parties to address the validity of the statutory basis for the takings in this case, whether the takings satisfy the public purpose test, whether the public purpose test is consistent with Const 1963, art 10, §2, and whether any decision overruling *Poletown, supra* should be applied retroactively or prospectively. *Wayne Co v Hathcock*, 671 NW2d 40 (2003). The Court also invited "[p]ersons or groups interested in the determination of the questions presented in this case" to seek leave to file briefs as amicus curiae, as the League has done.

I. WAYNE COUNTY, AS A PUBLIC CORPORATION, MAY RELY SOLELY ON MCL 213.23 IN EXERCISING THE LEGAL AUTHORITY TO TAKE PRIVATE PROPERTY FOR A PUBLIC PURPOSE

This Court has asked the parties to address “whether plaintiff has the authority, pursuant to MCL 213.23 or otherwise, to take defendants’ properties.” Defendants have contended in this litigation that Wayne County has relied only on MCL 213.23, MCL 213.23 could not, alone, serve as authority for Wayne County to take their property, and Wayne County lacked separate and additional authority to take property to develop a business park. This is an important argument for Defendants to make because, unlike the state, municipalities have no inherent authority to condemn property, and therefore must rely on delegated authority to take property for a public purpose. See *City of Lansing v Edward Rose Realty, Inc*, 442 Mich 626, 631-632; 502 NW2d 638 (1993). Were Defendants to prevail on this argument, Wayne County’s efforts to take their property would be invalid, meriting reversal in this appeal and barring the takings. In this instance, however, both the trial court and the Court of Appeals properly concluded that MCL 213.23 grants municipalities the authority to take private property for a public purpose. Thus, whether Wayne County could have relied on a different statutory basis for taking Defendants’ property is irrelevant to the outcome of this appeal.

A. Standard Of Review

The Supreme Court applies review de novo when interpreting a statute. See *Haliw v Sterling Heights*, 464 Mich 297, 302; 627 NW2d 581 (2001).

B. The Textual Meaning Of MCL 213.23

Courts have long recognized that their role in interpreting statutes is to “to give effect to the Legislature’s intent.” *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 347; 656 NW2d 175 (2003). The starting place for any statutory analysis is the language the Legislature used in the statute itself. See *Chandler v Co of Muskegon*, 467 Mich 315, 319; 652 NW2d 224 (2002). If the language the

Legislature used is unambiguous, then the Courts must enforce the statute as it is written. See *Weakland, supra* at 347. Only if the statute is ambiguous is it appropriate to resort to other tools of construction and look beyond the statutory language. See *Koontz v Ameritech Services, Inc*, 466 Mich 304, 319; 645 NW2d 34 (2002).

MCL 213.23 states:

Any *public corporation* or state agency is authorized to take private property necessary for a public improvement or *for the purposes of its incorporation or for public purposes within the scope of its powers for the use or benefit of the public* and to institute and prosecute proceedings for that purpose. When funds have been appropriated by the legislature to a state agency or division thereof or the office of the governor or a division thereof for the purpose of acquiring lands or property for a designated public purpose, such unit to which the appropriation has been made is authorized on behalf of the people of the state of Michigan to acquire the lands or property either by purchase, condemnation or otherwise. For the purpose of condemnation the unit may proceed under the provisions of this act. [Emphasis added.]

Keeping in mind the rules of statutory construction, there are three key, overarching questions that should be addressed when parsing the language of this statute: to whom does this statute apply, what does the statute permit to happen, and under what circumstances?

MCL 213.23 unambiguously identifies “[a]ny public corporation or state agency” as the entities to which it applies, and MCL 213.22 defines what constitutes a public corporation or state agency. Equally clear is that MCL 213.23 permits “[a]ny public corporation or state agency” “to take private property . . . for the use or benefit of the public and to institute and prosecute proceedings for that purpose.” See *In re Gallagher Ave in City of Hamtramck*, 300 Mich 309, 311; 1 NW2d 553 (1942) (This statute is “an act providing for the condemnation of land by state agencies and public corporations.”). The first sentence of the statute also identifies three circumstances under which it is proper for a public corporation or state agency to take private property for a public purpose: (1) when

the taking is necessary for a public improvement; (2) when the taking is for the purposes of the public corporation's incorporation; or (3) when the taking is for public purposes within the scope of the public corporation's powers. Separating these circumstances permitting a taking is a proper analytical approach because the word "or," which divides these three conditions in the text of the statute, is commonly used as a disjunctive, separating clauses within a sentence and indicating "an alternative or choice between two or more things." *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 69; 535 NW2d 529 (1995); see also Sabin, *The Gregg Reference Manual* (9th ed) ¶123(b) ("or" can be used in lieu of a comma to separate items in a series).

Additionally, though the words "for the use or benefit of the public" immediately follow the reference to a taking within the scope of a public corporation or state agency's powers, the structure of this statute makes clear that this phrase modifies each of the three circumstances. Specifically, in the same way the Legislature used the word "or," the Legislature also used the word "for" to separate clauses within MCL 213.23. This means that regardless of whether a public corporation or state agency is taking private land for a public improvement, for the purposes of its incorporation, or for some activity within the scope of its powers, the taking must also be "for the use or benefit of the public." See *Gallagher, supra* at 312 (applying statutory language requiring taking be for public use or benefit to takings for a public improvement). To conclude that this phrase applied only to takings within the scope of the public corporation or state agency's power would mean that the final reference in this sentence authorizing condemnation actions to effectuate the power of eminent domain would not apply to takings for public improvements or to carry-out the purpose of incorporation. In other words, the final portion of the first sentence in MCL 213.23 is broad, applying to all the specific enumerated circumstances in the middle of the first sentence.

This interpretation requiring a public purpose for any taking made pursuant to the authority granted in MCL 213.23 is consistent with one of the constitutional limitations on the power of eminent domain. The 1908 Constitution, which was in effect when the Legislature enacted 1911 PA 149, now codified at MCL 213.23, stated that “[p]rivate property shall not be taken by the public nor by any corporation *for public use*, without the necessity therefor being first determined and just compensation therefor being first made or secured in such manner as shall be prescribed by law.” Const 1908, art 13, §1 (emphasis added). The 1963 Constitution used substantially similar language, saying that “[p]rivate property shall not be taken *for public use* without just compensation therefor being first made or secured in a manner prescribed by law. Compensation shall be determined in proceedings in a court of record.” Const 1963, art 10, §2 (emphasis added). The term “public use” is synonymous with the term “public purpose,” and both terms express the idea of a benefit to the public. See *Poletown, supra* at 629-630; see also *Appeal of City of Keene*, 141 NH 797, 802; 693 A2d 412 (1997), quoting *Appeal of Cheney*, 130 NH 589, 595; 551 A2d 164 (1988) (“Public necessity is synonymous with public use – in other words, a public necessity exists if the city demonstrates a public purpose for the taking and that, on balance, “a probable net benefit to the public [will result] if [the] taking occurs for the intended purpose.”); *Pair Development Co, Inc v City of Atlanta*, 144 Ga App 239, 241; 240 SE2d 897 (1977) (equating public use with public purpose). Therefore it is only logical that this statutory requirement that the taking be “for the use or benefit of the public” be applied to all three circumstances that would permit a taking under MCL 213.23.

MCL 213.23 also states that the property being taken must be “necessary” for one of the three enumerated circumstances. The Legislature did not insert the word “necessary” before each of the three circumstances identified in the statute because it used the word necessary as an adjective and applied it equally to all three circumstances by listing them in a series. Like the phrase “for the use or benefit of

the public,” necessity also has a constitutional connotation. See Const 1908, art 13, §1; see also *Michigan State Highway Comm v Vanderkloot*, 392 Mich 159, 171-172; 220 NW2d 416 (1974) (Const 1963, art 10, §2 also requires necessity, but delegates that determination to Legislature). It is only logical that the Legislature would require private property taken for any one or more of the three circumstances identified in MCL 213.23 also be necessary for the intended public purpose. Consequently, within the context of this statute, necessity and public use or benefit are symmetrical constitutional concepts, placed as if book ends for the three circumstances identified in the statute, and therefore applying to all three circumstances.

In sum, the first sentence of MCL 213.23 should be read as follows: This statute applies to a public corporation or state agency as defined in MCL 213.22. An entity fitting the definition of a public corporation or state agency as defined in MCL 213.22 has the authority to take private property if the property being taken is (1) for a public improvement, or (2) for the purposes of the public corporation or state agency’s incorporation, or (3) for public purposes within the scope of the public corporation or state agency’s powers. No matter which one of these three circumstances forms the basis for the public corporation or state agency’s taking, the property must be taken for the use or benefit of the public, and must be necessary for that use or benefit. When taking private property under one or more of these three circumstances for the use or benefit of the public, the public corporation or state agency has the power to institute and prosecute proceedings for that purpose.

C. Public Corporations And State Agencies Do Not Need Adjunct Authority To Take Property Pursuant To MCL 213.23

Despite the clear meaning of MCL 213.23, Defendants argue that the authority granted in MCL 213.23 to take private property must be exercised in conjunction with another statutory or constitutional provision conferring the power of eminent domain. Yet, the text of MCL 213.23 simply does not

support such an interpretation. Had the Legislature wanted to require public corporations and state agencies to have this adjunct authority to take private property, it could have stated so in the text of MCL 213.23 when it enacted the statute originally, or when it amended the statute later. See 1911 PA 149; 1925 PA 37; 1966 PA 351. However, because the Legislature chose not to do so, MCL 213.23 cannot be interpreted to require adjunct authority. See, generally, *VanGessel v Lakewood Public Schools*, 220 Mich App 37, 40-46; 558 NW2d 248 (1996) (Legislature could have, but did not include certain language in statute, and therefore the plain language of the statute controlled).

Nor would the language of MCL 213.23 tolerate an interpretation that would require public corporations and state agencies to seek authority from some other source to take private property. To the contrary, MCL 213.23 expressly indicates that the Legislature intended for this statute to permit public corporations and state agencies to take action to condemn private property under the enumerated circumstances. In particular, the statute states that a public corporation or state agency is “authorized to take private property” and explicitly grants those entities the power to “institute and prosecute proceedings” to take property under the enumerated circumstances. MCL 213.23. Both phrases in the statute indicate that this statute is not merely a shell, describing actions that may be taken only on the basis of authority granted elsewhere. Instead, it is clear from the statutory language that the Legislature delegated to public corporations and state agencies real power to act under MCL 213.23.

Defendants nevertheless argue that the multiplicity of statutes permitting condemnation would be rendered superfluous if this Court concluded that MCL 213.23 *also* authorized takings. In other words, Defendants seek to force this Court to make an artificial choice between MCL 213.23 as a general statute conferring the power of eminent domain and the many different statutes conferring the power of eminent domain for specific purposes. Defendants, however, can point to no authority whatsoever holding that the Legislature may pass only a single law concerning a particular topic. Nor do

Defendants explain why public corporations and state agencies must choose to rely on the most specific statutes applicable to a particular taking. In fact, the law requires no such choice between a general and particularized statute for a taking. Public corporations and state agencies are free to choose to rely on MCL 213.23 as authority to take private property even when other statutory authority for a taking exists. See *Union School Dist of City of Jackson v Starr Commonwealth for Boys*, 322 Mich 165, 169-170; 33 NW2d 807(1948); *Weitzel v City of Fordson*, 244 Mich 559, 564; 222 NW 113 (1928).

That public corporations and state agencies may take the unnecessarily cautious step of relying on more than one statutory basis to take private property in particular cases in no way indicates that they would be unable to rely on a single statutory basis for the takings. In fact, there are ample examples of public corporations and state agencies relying solely on the authority granted in MCL 213.23 in order to take private property. See *Marion v City of Detroit*, 284 Mich 476, 481; 280 NW 26 (1938); *Petition of City of Detroit to Condemn Lands*, 280 Mich 708, 709; 274 NW 375 (1937); *Com'n of Conservation of Dep't of Conservation v Hane*, 248 Mich 473, 474; 227 NW 718 (1929); *In re Bd of Education of City of Detroit*, 242 Mich 658, 659; 219 NW 614 (1928); *Burke v City of River Rouge*, 240 Mich 12, 13; 215 NW 18 (1927); *Petition of Bd of Education of City of Detroit*, 239 Mich 46, 47; 214 NW 239 (1927); see also *Western Michigan Univ Bd of Trustees v Slavin*, 381 Mich 23, 25; 158 NW2d 884 (1968); *In re John C Lodge Highway, City of Detroit*, 340 Mich 254, 259; 65 NW2d 820 (1954). Therefore, Wayne County's choice to proceed under MCL 213.23 rather than any one of the many other statutes permitting it to take private property is irrelevant to the outcome of this appeal; whether Wayne County had the statutory authority to take Defendants' property depends on the application of MCL 213.23 to the facts of this case.

D. MCL 213.23 Applied

There is no dispute that Wayne County is a public corporation within the meaning of MCL 213.23 because MCL 213.22 defines a public corporation to include “all counties.”¹ Under Judge O’Connell’s opinion for the Court of Appeals, this – alone – would be enough to grant Wayne County the authority under MCL 213.23 to take Defendants’ property as long as the taking also met constitutional requirements, i.e., the Pinnacle Project is for a public purpose, and the property is necessary for the Pinnacle Project. Appendix A, O’Connell slip op at 6. The League certainly supports a holding that MCL 213.23 grants all public corporations and state agencies the authority to take private property when the property is necessary for the project and the project is for a public purpose, without scrutinizing the three circumstances identified in MCL 213.23. However, this Court has consistently emphasized the need to give effect to all the words in a statute, which include these three circumstances that Judge O’Connell did not address. See *Omelenchuk v City of Warren*, 466 Mich 524, 528; 647 NW2d 493 (2002). Consequently, below, the League examines which of these three circumstances supported the takings in this case.

The parties agree that the second circumstance identified in MCL 213.23 would not authorize the takings in this case because Wayne County was not incorporated specifically for the purpose of developing business parks like the Pinnacle Project. Cf. *Petition of Huron-Clinton Metropolitan Authority*, 306 Mich 373, 377; 10 NW2d 920 (1943) (authority was incorporated for the purpose of developing and maintaining parks and related infrastructure, and properly sought to condemn private property to develop park). Accordingly, whether Wayne County was permitted to take Defendants’

¹ Judge O’Connell’s lead opinion for the Court of Appeals acknowledged that these three circumstances permitting a taking exist in MCL 213.23. Appendix A, O’Connell slip op at 6. However, he never attempted to explain how the facts of this case fit any of those three circumstances, even though the trial court had systematically done so. Appendix A, p 5-15.

property rises or falls on the basis of whether the taking was for a public improvement or within the scope of Wayne County's powers.

Defendants argue that the takings were not for a public improvement, the first of the three circumstances in which MCL 213.23 authorizes a taking. In fact, the trial court explicitly held that the takings were at least partially for a public improvement. Appendix C, p 6-8. The trial court reached this conclusion by looking to the Revenue Bond Act, MCL 141.101 *et seq.*, for the definition of what constitutes a public improvement and reading that definition in *pari materia* with MCL 213.23. See *id.* at 6, n 3, quoting the definition of a "public improvement" in MCL 141.103(b). The trial court noted that Wayne County would be constructing storm drains and expanding Detroit Metro, and that the Revenue Bond Act defined public improvements to include storm water systems and aeronautical facilities. Appendix C, p 7-8. The trial court's reference to the Revenue Bond Act was particularly apt. Courts commonly use the Revenue Bond Act as a point of reference when defining municipal authority, including authority concerning public improvements, even when the municipality is not issuing bonds. See *Atlas Valley Golf & Country Club, Inc v Village of Goodrich*, 227 Mich App 14, 20, n 1; 575 NW2d 56 (1997); see also *Sabaugh v City of Dearborn*, 384 Mich 510; 185 NW2d 363 (1971). While Defendants dispute whether the takings in this case were intended to construct public improvements, they do not dispute that the Revenue Bond Act provides an appropriate definition for the public improvements referenced in MCL 213.23. The net effect is that the Revenue Bond Act includes within its definition of a public improvement some of the same purposes Wayne County has identified for the takings in this case. Consequently, the Revenue Bond Act provides support for the trial court's conclusion that MCL 213.23 granted Wayne County authority to take at least some of Defendants' property to construct those improvements. Additionally, to the extent that Wayne County was taking Defendants' property to construct roads, roads are public improvements for which municipalities

traditionally may condemn private property. See, generally, *Lodge Highway*, *supra* at 258; *In re Harper Ave*, 237 Mich 684, 688; 213 NW 74 (1927).

The more important analysis, however, examines whether the facts of this case meet the third circumstance identified in MCL 213.23, thereby authorizing Wayne County to take all the property involved in this case, not merely the property it would use to construct public improvements. The crux of Defendants' argument is that Wayne County cannot point to any express authority for it to condemn property to construct the Pinnacle Project, and therefore Defendants contend that the takings were not within the scope of Wayne County's authority. In light of this argument, the pertinent inquiry is whether Wayne County had to have express authority to take the property in this case. The answer to this question is a resounding "no."

Wayne County exercises home rule authority. See *Wayne Co Bd of Com'rs v Wayne Co Airport Authority*, 253 Mich App 144, 150-151; 658 NW2d 804 (2002). Though Wayne County is subject to state laws limiting its authority, see *O'Hara v Wayne Co Clerk*, 238 Mich App 611, 614; 607 NW2d 380 (1999), it nevertheless has the broad authority to define the scope of its powers in its charter. In particular, Const 1963, art 7, §2 allows a county charter to "authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns." This authority to adopt resolutions and ordinances is without limitation in the text of the constitution because Const 1963, art 7, §2 was "intended to enable counties to adjust their governmental structure to meet modern problems effectively." *Lucas v Wayne Co Election Com'n*, 146 Mich App 742, 747; 381 NW2d 806 (1985). This authority granted to counties in Const 1963, art 7, §2 must "be liberally construed in their favor," and includes powers "fairly implied and not prohibited by this constitution." Const 1963, art 7, §34. The Legislature has itself reflected this constitutional position on the broad powers of home rule

counties when it enacted MCL 45.3, stating that a county is organized “to do *all other necessary acts* in relation to the property and *concerns of the county*.” Emphasis added.

The Wayne County Charter incorporates the full breadth of the home rule powers afforded to Wayne County. Appendix D. Section 1.112 states in relevant part that Wayne County is “a body corporate, [and] possesses home rule power enabling it to provide for *any matter of county concern and all powers conferred by constitution or law upon charter counties or upon general law counties*, their officers, or agencies.” Appendix D, p 1 (emphasis added). The Charter does not expressly provide for the right to take property or develop business parks. However, contrary to Defendants’ argument, the Charter did not need to have any such express provision. As the Michigan Court of Appeals noted in *Adams Outdoor Advertising, Inc v City of Holland*, 234 Mich App 681, 687; 600 NW2d 339 (1999), it is well-settled that the entities that have home rule authority “enjoy not only those powers specifically granted, but they may also exercise all powers not expressly denied.” See also Const 1963, art 7, §34; Cf. *O’Hara*, *supra* at 614. Because nothing in the Wayne County Charter denies Wayne County the authority to take private property for a public purpose, doing so was within the scope of its powers. See Indeed, in *Edward Rose*, this Court implicitly concluded that an entity with home rule powers can take private property under MCL 213.23, which is why the Court examined whether the taking in that case was for a public purpose before it held the taking unconstitutional. *Edward Rose*, *supra* at 634-644. In other words, the *Edward Rose* Court never would have examined whether there was a public purpose for the takings in that case had it not already determined that the City of Lansing’s home rule authority was sufficient for it to take private property under MCL 213.23.

Further, §3.115 of the Wayne County Charter gives the Wayne County Commission the authority to act by resolution. Appendix D, p 2. As a result, the Wayne County Commission only needed to identify the Pinnacle Project as a matter of county concern for it to pass the Resolution of

Necessity in this case and thereby authorize the takings. See Const 1963, art 7, §2. In fact, the findings in the Resolution of Necessity expressly note the many reasons why the takings for the Pinnacle Project are of critical concern to Wayne County. Appendix B.

Defendants have not identified any specific provision in the Wayne County Charter, statute, or constitution barring Wayne County from taking private property for a public purpose. The League is not aware of any such specific provision barring these takings. Accordingly, Wayne County properly invoked MCL 213.23 to take Defendants' property because taking private property for a public purpose is within the scope of Wayne County's home rule powers. This conclusion is all-the-more apparent when liberally construing Wayne County's home rule powers in its favor, as Const 1963, art 7, §34 requires. Therefore, the trial court did not err when it determined that Wayne County has the statutory authority to take Defendants' private property, and the Court of Appeals did not err when it affirmed the trial court in this regard.

II. **THE TAKINGS IN THIS CASE ARE CONSTITUTIONAL BECAUSE THEY ARE BOTH FOR A PUBLIC PURPOSE AND NECESSARY**

The parties do not dispute that a taking must be for a public purpose and necessary in order to be constitutional. MCL 213.23 also refers to necessity and public purpose. Because these two constitutional concepts existed at the time the Legislature enacted and amended MCL 213.23, the League assumes for the sake of argument that necessity and public purpose have the same meaning under MCL 213.23 and Michigan's Constitution.

Notwithstanding the trial court's conclusions of fact and law supporting the takings in this case, Defendants contend that the takings are unconstitutional because the Pinnacle Project is not for a public purpose, and even if it were for a public purpose, their property is not necessary to the Pinnacle Project. Defendants have attacked the public purpose and necessity of these takings on far-ranging grounds, most

of which attempt to portray the Pinnacle Project in inherently contradictory terms. According to Defendants, the Pinnacle Project is speculative, but its design and aims are also clearly intended to benefit private interests.

Wayne County has ably refuted each of Defendants' contentions on the basis of the record developed in this case. The League supports Wayne County's arguments. In particular, the League notes that the trial court's factual determination that the evidenced submitted at the lengthy hearing in this case demonstrated that the Pinnacle Project was for a public purpose and Defendants' property was necessary for the Pinnacle Project is entitled to deference from the appellate courts under the clear error standard of review. See MCR 2.613(C); see also *Nelson Drainage Dist v Filippis*, 174 Mich App 400, 403; 436 NW2d 682 (1989).

III. **POLETOWN AND THE PUBLIC PURPOSE TEST SUPPORT THE OUTCOME IN THIS CASE AND ARE CONSISTENT WITH THE CONSTITUTIONAL LIMITS ON THE POWER OF EMINENT DOMAIN**

In their application for leave to appeal, Defendants asked this Court to determine whether its decision in *Poletown*, *supra*, controls this case, and if it does, whether *Poletown* remains good law. Defendants raised this issue because when the Court of Appeals considered this case, Judges Murray and Fitzgerald agreed that *Poletown* compelled affirming the trial court in this case, but indicated that they questioned whether *Poletown* was consistent with the constitutional requirement that private property be taken only for a public purpose. Wayne County has relied on *Poletown* in arguing that the Pinnacle Project is for a public purpose regardless of the fact that private interests may eventually benefit for this development. Wayne County has not, however, conceded that if *Poletown* ceases to be good law, these takings are unconstitutional. Considering both the Court of Appeals' critical view of *Poletown* and the parties' essential debate of the public purpose of the Pinnacle Project, this Court has now asked the

parties to address whether “the ‘public purpose’ test set forth in *Poletown*, *supra*, is consistent with Const 1963, art 10, §2 and, if not, whether this test should be overruled.”

The League explains below that *Poletown* may be misunderstood, but it is not an aberrant opinion that ignored constitutional principles to achieve a particular result, as Defendants would have this Court hold. Rather, *Poletown* is firmly rooted in Supreme Court precedent requiring deference to legislative policy choices and holding that public purpose is a flexible concept judged by a single standard examining whether the benefit to the public from a taking is clear and significant. Therefore, the League asserts, *Poletown* and the public purpose test are consistent with Const 1963, art 10, §2 and should not be overturned. Moreover, while there may be honest disagreement regarding whether the record in *Poletown* justified the takings in that case, there cannot be any disagreement that the legal foundations for the majority opinion in *Poletown* were and remain strong. Thus, to the extent that the trial court and the Court of Appeals concluded that *Poletown* supported the takings in this case, the lower courts did not err because the substantial legal foundation on which *Poletown* rests would permit the takings in this case even if this Court overruled *Poletown*.

A. Standard Of Review

Whether *Poletown* and its public purpose test are consistent with the constitutional limits on the power of eminent embodied in Const 1963, art 10, §2 is a question of law subject to review de novo. See *Trent v Suburban Mobility Authority for Regional Transp*, 252 Mich App 247, 252; 651 NW2d 171 (2002).

B. *Poletown* Overview

In *Poletown*, the Detroit Economic Development Corporation sought to acquire property to convey to General Motors Corporation so that GM could construct an automotive assembly plant. *Poletown*, *supra* at 628. At the time, the City of Detroit was facing a severe economic downturn and

increasing unemployment, and this new assembly plant was expected to alleviate those conditions by providing jobs and expanding Detroit's economic base. *Id.* at 633-634. In an unusual twist, the plaintiffs in *Poletown* were not the condemning authorities. Rather, individuals and the Poletown Neighborhood Association, all of whom had interests in the area to be affected by the new assembly plant, sued to "challenge" the project, which was proceeding under the Economic Development Corporations Act, MCL 125.601 *et seq.* *Poletown, supra* at 628. After the trial court dismissed the plaintiffs' complaint, the plaintiffs appealed directly to the Supreme Court, bypassing the Court of Appeals. *Id.*

On appeal, the Supreme Court specifically addressed whether it was constitutional under Const 1963, art 10, §2 for a municipality to use the statutory authority provided in the Economic Development Corporations Act to condemn private property, and then transfer the property to another private party. *Poletown, supra* at 629. The touchstone for constitutionality in this context, the Court observed, was whether "the power of eminent domain" was being "invoked . . . to further a public use or purpose." *Id.* Though Const 1963, art 10, §2 indicates that private property may be taken only for "public use," and does not refer to "public purpose," the Court concluded that "the terms have been used interchangeably in Michigan statutes and decisions in an effort to describe the protean concept of public benefit." *Id.* at 630. Turning to the more substantive issue in the case, the *Poletown* Court determined that there was a substantial and clear benefit to the public from this project to build the assembly plant, and that any benefit to private interests was merely incidental to this public purpose. *Id.*

C. Courts Defer To Legislative Policy Choices

In holding that the takings in *Poletown* were constitutional, the Court expressly gave deference to the Michigan Legislature's constitutional authority to enact laws for the public health and general welfare, and its specific determination in the Economic Development Corporations Act "that

governmental action of the type contemplated here meets a public need and serves an essential public purpose.” *Id.* at 631-632. While not necessarily due the same level of deference as the Michigan Legislature, the Court noted that the Legislature had “delegated the authority to determine whether a particular project constitutes a public purpose to the governing body of the municipality involved.” *Id.* at 633. This analysis tracing the authority to take private property from the Michigan Constitution, to the Legislature, and finally to the entity making the decision essentially recognized the underlying premise for a taking: at times, an individual’s right to property must give way to a necessary and common good, and that such a decision must be made in light of the circumstances. *Id.* at 633-634. In other words, the majority in *Poletown* indicated that what constitutes a public purpose is truly a policy choice and therefore best left to those bodies that have the authority and expertise to make policy decisions. *Id.* at 632.

The Court in *Poletown* had a substantial legal basis supporting its deference to the legislative policy decisions involved in the takings in that case. In the separation of powers clause, Michigan’s constitution expressly incorporates the idea that each branch of government must defer to other branches of government acting within their own spheres of constitutional authority. See Const 1963, art 3, §2; see also *People ex rel Sutherland v Governor*, 29 Mich 320 (1874) (describing the interplay of the three branches of government and their respective roles under the constitutional framework). More than one hundred years ago, Justice Cooley noted that this was a particularly efficient arrangement because “[t]he law must leave the final decision upon every claim and every controversy somewhere, and when that decision has been made, it must be accepted as correct. The presumption is just as conclusive in favor of executive [or legislative] action as in favor of judicial.” *Sutherland, supra* at 330. With respect to policy, the Constitution grants the legislative branch of government the right and obligation of making those choices. As this Court explained in *O’Donnell v State Farm Mut Automobile Ins Co*, 404 Mich

524, 542; 273 NW2d 829 (1979), “The responsibility for drawing lines in a society as complex as ours of identifying priorities, weighing the relevant considerations and choosing between competing alternatives is the Legislature’s, not the judiciary’s.” Because, “[p]erfection is not required” in policy choices, and certainly could not be expected, the judiciary has no role to play in establishing its own priorities and preferences among the choices that the legislative branch of government considered in a particular instance. *Id.*

This idea of judicial deference to legislative policy choices is not merely a convenient doctrine used only when courts find a problem too troublesome to address. Michigan’s courts have consistently deferred to legislative policy choices in many different contexts. See, e.g., *Daniel v Dep’t of Corrections*, 468 Mich 34, 41, n 6; 658 NW2d 144 (2003) (worker’s compensation); *Smith v Cliffs on the Bay Condominium Ass’n*, 463 Mich 420, 430; 617 NW2d 536 (2000) (tax sale of property); *Oakland Bd of Co Road Com’rs v Michigan Property & Casualty Guaranty Ass’n*, 456 Mich 590, 612-613; 575 NW2d 751 (1998) (insurance law); *Proctor v White Lake Twp Police Dep’t*, 248 Mich App 457, 466; 639 NW2d 332 (2001) (Freedom of Information Act); *Cipri v Bellingham Frozen Foods, Inc.*, 235 Mich App 1, 13; 596 NW2d 620 (1999) (environmental laws). Indeed, the notion that when a legislative pronouncement on a policy matter is clear, any complaints about its wisdom should be addressed to the legislative body appears both in this Court’s newest and oldest opinions, suggesting that courts have given effect to this deference consistently throughout this state’s history. See, e.g., *Levy v Martin*, 463 Mich 478, 490; 620 NW2d 292 (2001) (whether statute of limitations was problematic was beyond the Court’s purview and should be addressed to the Legislature); *Wing v Warner*, 2 Doug 288 (1846) (any unfair effect from period of limitations should be brought to Legislature’s attention). Deference to legislative policy choices with respect to takings in Michigan is no different from these other cases. See, generally, *Paul v City of Detroit*, 32 Mich 108 (1875) (before the 1851 Constitution, “neither jury nor

commissioners had any duty to perform except assessing damages, and the prerogative of taking property on their own estimate of its necessity was exercised by legislatures or those persons or corporations whom they allowed to act in the matter.”). Nor is Michigan alone in deferring to legislative decisions with respect to takings. See *United States ex rel Tennessee Valley Authority v Welch*, 327 US 546, 551-552; 66 S Ct 715; 90 L Ed 843 (1946); *Daniels v Area Plan Com’n of Allen Co*, 306 F3d 445, 460 (2002). As the United States Supreme Court explained in *Berman v Parker*, 348 US 26, 32; 75 S Ct 98; 99 L Ed 27 (1954):

[W]hen the legislature has spoken, *the public interest has been declared in terms well-nigh conclusive*. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation, whether it be Congress legislating concerning the District of Columbia, or the States legislating concerning local affairs. *This principle admits of no exception merely because the power of eminent domain is involved*. The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one. [Citations omitted and emphasis added.]

Thus, the *Poletown* majority’s express deference to the legislative policy choice that the takings in that case were for a public purpose should have been expected as a routine application of substantive constitutional doctrine, regardless of the unusual prominence of the case. See *Poletown, supra* at 632.

Justice Kavanagh’s opinion in *Gregory Marina, Inc v City of Detroit*, 378 Mich 364, 392-398; 144 NW2d 503 (1966),² provides a lengthy explanation of why the determination of public purpose is a policy choice not subject to judicial second-guessing. As Justice Kavanagh described it, the “determination of what constitutes a public purpose involves considerations of economic and social philosophies and principles of political science and government. Such determinations should be made by the elected representatives of the people.” *Id.* at 394. While Justice Kavanagh acknowledged that

² Evidently, Justice O’Hara agreed with Justice Kavanagh’s view that it is the Legislature’s job to determine public purpose, and therefore the portion of Justice Kavanagh’s opinion addressing deference to the Legislature is a majority opinion. See *Gregory, supra* at 406 (O’Hara, J.).

there were cases referring to public purpose as a judicial question, he nevertheless distinguished those cases as “dicta of ancient origin.” *Id.* at 395. More important, in his view, was the authority indicating that the right to condemn property flows directly from the sovereignty of the state and the power of the people. *Id.*; see also *Silver Creek Drain Dist v Extrusions Div, Inc*, 468 Mich 367, 373; 663 NW2d 436 (2003). Given the source of this power to condemn property, Justice Kavanagh’s conclusion that the people’s representatives were the best suited to make condemnation choices was eminently logical. *Gregory Marina, supra* at 395.

The degree to which Justice Kavanagh was willing to acknowledge the legislative branch of government’s primary authority to determine what constitutes a public purpose is also a reflection of the fact that, for the majority of Michigan’s history, condemnation proceedings have been “inquests,” and not judicial proceedings. See *Huron-Clinton, supra* at 387. Traditionally, the jury in a condemnation case was allowed to decide the law as well as the facts, and the judge was restricted to the role of an advisor, likely because these inquests were considered “legislative” proceedings. See *id.* 387-388; *People v Bd of Health of City of New York*, 20 How Pr 458; 12 Abb Pr 88; 33 Barb 344 (NY Sup General Term 1861), cited in *Smith v Milton School Dist No 2*, 40 Mich 143 (1879) (Stating that it is not “proper to review the legislation of any body having authority so to do, even where, in the course of such legislation, they might exceed the powers vested in them.”). That these inquests were legislative in character appears to have been yet another extension of the idea that it is proper to have representative bodies, or at least bodies with members drawn from or near the locality in which a taking was proposed to occur, make decisions regarding public purpose. See, generally, *In re FAI-75 Expressway in City of Detroit, Wayne Co*, 4 Mich App 496, 499-500; 145 NW2d 223 (1966), quoting *Toledo AA & GTR v Dunlap*, 47 Mich 456, 462; 11 NW 271 (1888). While Const 1963, art 10, §2 now makes condemnation cases judicial proceedings by placing them in “courts of record,” *Gregory Marina* and *FAI-75*

Expressway indicate that the special deference to legislative choices in condemnation cases survived the adoption of the 1963 Constitution.

In this case, in enacting MCL 213.23, the Michigan Legislature made a policy determination to allow public corporations like Wayne County to act within the scope of their powers to take private property. Despite the trend toward particularized condemnation statutes, the Legislature clearly saw the remaining need for a general statute granting the power of eminent domain so that public corporations and state agencies could respond effectively to local needs. See *Starr Commonwealth, supra* at 169-170. With respect to these specific takings, the Wayne County Commission, which is Wayne County's "legislative body . . . vested with all legislative authority," made a specific determination in its Resolution of Necessity that these takings were for a public purpose. See Appendix A; Appendix D, p 2, § 3.111. Thus, in keeping with the extensive case law addressing deference for legislative decisions, both in condemnation proceedings and in other contexts, this Court should defer to the determination that these takings are for a public purpose. To paraphrase Justice O'Hara in *Gregory Marina, supra* at 406, the Pinnacle Project serves a public purpose because the legislature and the Wayne County Commission, whose business it is, said so.

D. *Poletown* Mandates That Public Purpose Be Determined Under The Clear And Significant Standard, Which Should Be Upheld Because It Is Both Easy To Apply And Effective In Identifying Constitutional Takings

Having acknowledged the deference that the courts must give to legislative decisions regarding takings, the Court in *Poletown* nevertheless grappled with defining the outermost limits of a legislative body's discretion to determine when to take private property without transgressing the constitutional limits on its own judicial authority. *Poletown, supra* at 632-633. Though General Motors clearly stood to benefit from the takings involved in *Poletown*, the Court refused to take a categorical approach that would have held as unconstitutional any taking that would have offered a financial benefit to private

interests. A categorical approach would have provided an easy resolution to the case, and also a desirable result in the way it would have yielded a bright-line rule to apply in future cases. At the same time, however, such a ruling likely would have had unintended consequences, making takings with unquestionably public purposes unconstitutional. For instance, had *Poletown* categorically rejected any taking with financial benefit to private interests, the construction of roads may have been held unconstitutional because of the cost savings private businesses achieve when able to transport their goods to market more quickly and efficiently and the financial benefit to the private businesses that manufacture the materials used to construct roads. Similarly, the blight and slum clearance cases would have been declared unconstitutional under such a standard because of economic benefit to the person or entity that eventually redevelops the cleared property. For all their vehement protests in *Poletown*, not even Justices Ryan and Fitzgerald were willing to go so far in limiting takings. See *Poletown, supra* at 640-643 (Fitzgerald, J.) and 672-674 (Ryan, J.) (conceding constitutionality of slum clearance).

To avoid the problems associated with a categorical approach, the majority in *Poletown* returned to foundational principles of takings law, explaining:

There is no dispute about the law. All agree that condemnation for a public use or purpose is permitted. All agree that condemnation for a private use or purpose is forbidden. Similarly, condemnation for a private use cannot be authorized whatever its incidental public benefit and condemnation for a public purpose cannot be forbidden whatever the incidental private gain. . . . [*Poletown, supra* at 632.]

Not even Defendants have contested the extensive basis in precedent that exists for these propositions of law. The *Poletown* Court, however, knew that even though it was easy to state this syllogism, difficult cases do exist. Because the constitution can only permit or prohibit a taking, and not provide a third alternative for takings that do not fall easily into either of these categories, the Court had to provide a way of analyzing whether a taking was constitutional in *every* instance. This universal analysis had to

fit cases even if the articulated public purpose was mixed with a private purpose or benefit. According to *Poletown*, the sole pertinent question in any case is whether the public purpose is “clear and significant,” meaning that it predominates over any private benefit from the taking, *Poletown, supra* at 634. If so, then the taking is constitutional, presuming of course that taking the property is necessary and the owner receives just compensation.

Poletown’s “clear and significant” standard stemmed directly from older cases, but was a purposeful reformulation that eliminated the cumbersome task of evaluating incidental benefits and allowed courts to focus exclusively on the “object” of the taking. See *Swan v Williams*, 2 Mich 427, 435 (1852); see also *In re Slum Clearance in City of Detroit*, 331 Mich 714, 721-722; 50 NW2d 340 (1951). This reformulation of this old standard was also an elegant way to harmonize a court’s obligation to defer to legislative policy choices while still ensuring that condemning authorities do not exceed their constitutional limits. Under the clear and significant standard, courts need only examine the record in a condemnation case to the extent that they are satisfied that the predominant purpose of the taking is apparent. If the public purpose of a taking is manifest, meaning it is clear and significant, then the court need not infringe on legislative prerogative by scrutinizing the taking any further, see *New Products Corp v Ziegler*, 352 Mich 73, 86-88; 88 NW2d 528 (1958), even if the court would find the taking ill-conceived for the intended public purpose, see *Sinas v City of Lansing*, 382 Mich 407, 414; 170 NW2d 23 (1969). If the private purpose of a taking is manifest, meaning that the public purpose is not clear and significant, then the condemning authority is not entitled to any deference and the court is acting within its proper sphere of authority by declaring the taking unconstitutional. See *City of Center Line v Chmelko*, 164 Mich 251, 253; 416 NW2d 401 (1987). If the purpose of the taking is not obvious, then this clear and significant standard directs the court to examine the record until it can determine conclusively whether the public or private purpose predominates.

This clear and significant standard also served a practical purpose. By using the words “clear and significant,” the *Poletown* majority gave the courts a long-standing and well-known referent, allowing them to draw an analogy to the clear error standard of review. See, generally, *City of Detroit v Michigan Railroad Com’n*, 209 Mich 395, 423; 177 NW 306 (1920). Like the clear and significant standard, the clear error standard of review incorporates the concept of deference to facts found by another body, albeit deference by appellate courts to a lower court or tribunal that received testimony and other evidence directly. See, generally, *People v Frohriep*, 247 Mich App 692, 702; 637 NW2d 562 (2001). In takings cases, this deference is to the legislative body that determined that a public purpose for a taking exists.

The *Poletown* majority did insert a degree of confusion into what would be an otherwise straightforward analysis when applying this clear and significant standard to the facts of the case in stating:

Our determination that this project falls within the public purpose, as stated by the Legislature, does not mean that every condemnation proposed by an economic development corporation will meet with similar acceptance simply because it may provide some jobs or add to the industrial or commercial base. If the public benefit was not so clear and significant, we would hesitate to sanction approval of such a project. The power of eminent domain is restricted to furthering public uses and purposes and is not to be exercised without substantial proof that the public is primarily to be benefited. *Where, as here, the condemnation power is exercised in a way that benefits specific and identifiable private interests, a court inspects with heightened scrutiny the claim that the public interest is the predominant interest being advanced.* Such public benefit cannot be speculative or marginal but must be clear and significant if it is to be within the legitimate purpose as stated by the Legislature. We hold this project is warranted on the basis that its significance for the people of Detroit and the state has been demonstrated. [*Poletown, supra* at 634-635 (emphasis added).]

Some courts have seized on the reference to “heightened scrutiny” when there are “specific and identifiable” private interests at issue in a case. See, e.g., *City of Detroit v Lucas*, 180 Mich App 47, 53;

446 NW2d 596 (1989) (Beasley, P.J., dissenting). These courts discuss this fleeting mention of “heightened scrutiny” as if it were something other than an ordinary examination of the record to determine that the public purpose articulated for the taking is supported by evidence demonstrating that a clear and significant benefit to the public from the taking predominates over any private benefit.

In fact, several elements of the *Poletown* opinion make clear that, regardless of the terminology used, there can be only one standard for determining whether a taking is constitutional – the clear and significant standard, not any so-called heightened scrutiny. Consider, for instance, that the term heightened scrutiny appears only once in the majority opinion in *Poletown*. *Poletown, supra* at 635. That sole mention is in the middle of a paragraph stressing that taking the property in that case was clearly, significantly, and therefore primarily intended to benefit the public. *Id.* at 634-635.

Also consider that the Court in *Poletown* made certain to warn that not all economic development projects will necessarily meet the standard for a constitutional taking. *Poletown, supra* at 634. This implied that every condemnation case requires an individualized analysis to determine whether the taking is constitutional. This individualized analysis is inconsistent with the idea that some cases are so clearly constitutional or unconstitutional that they require virtually no scrutiny at all, while other cases are unclear and therefore require “heightened scrutiny.” This notion that certain condemnation cases require more or less scrutiny is akin to the legal fiction used in place of a harmless error analysis for unpreserved issues in older criminal cases. In those cases, the appellate courts suggested that they would not even review the unpreserved issue in the absence of manifest justice. See, e.g., *People v Wright*, 408 Mich 1, 30-32; 289 NW2d 1 (1980). Of course, to conclude that manifest injustice would not result from the refusal to review an issue requires some level of analysis in the first place. Similarly, the conclusion that the public purpose in a condemnation case is or is not clear and significant, and therefore predominant, requires some analysis in the first place. Only by applying a

single and consistent standard is it possible to sort the constitutional takings from the unconstitutional takings on the basis of public purpose, even though it may be easier to conclude in some cases rather than others whether the taking is constitutional. The clear and significant standard applied in *Poletown* and subsequent cases³ is this sole form of scrutiny of public purpose.

The very simplicity of the clear and significant standard and the ease with which it can be applied as a test of public purpose in every takings case militates in favor of this Court reaffirming *Poletown*'s validity. While other courts have used different language to describe the same or similar analysis, the League has yet to find a standard that is as workable and efficient in sorting the constitutional takings from the unconstitutional takings. See, e.g., *Hawaii Housing Auth v Midkiff*, 467 US 229, 241-242; 104 S Ct 2321; 81 L Ed 2d 186 (1984) (legitimate purpose and rational relationship test). After all, as Wayne County has pointed out in this case, this standard has worked as intended by identifying unconstitutional takings, and therefore enforcing the protections for private property ownership that is at the heart of Const 1963, art 10, §2. See *Edward Rose*, *supra* at 639; *Chmelko*, *supra* at 262-263; see also *Tolksdorf v Griffith*, 464 Mich 1, 10; 626 NW2d 163 (2001). Const 1963, art 10, §2, as well as the bench and bar, would be best served in this case by an opinion clarifying that public purpose remains the touchstone for the constitutionality of a taking as determined by the clear and significant standard, and that heightened scrutiny has no role to play in the analysis.

³ Notably, in *Edward Rose*, a case involving a taking for a private cable television operator, this Court did not refer to heightened scrutiny even though a private interest was clearly at issue and the Court concluded that the taking was unconstitutional. *Edward Rose*, *supra* at 633-635. Rather, the Court chose to look at the facts behind the ordinance to determine whether the ordinance permitting the taking was "reasonable and serves a public purpose" while taking into consideration the deference that was due to the city. *Id.* at 634. This was effectively *Poletown*'s clear and significant standard applied.

E. Public Purpose Is A Flexible Concept And *Poletown's* Conclusion That Economic Development Can Serve As A Valid Public Purpose For A Taking Finds Ample Support In Other Opinions

For all the confusion it has caused, the reference to heightened scrutiny in *Poletown* is helpful in this case because it gives a context to Judges Murray's concerns with the Pinnacle Project, and in the process helps to demonstrate why the takings in this case are constitutional. The reference to heightened scrutiny in *Poletown* is really best seen as an effort to reassure dissenting Justices Ryan and Fitzgerald that the majority decision did not signal the end to private property rights in Michigan. See *Poletown*, *supra* at 644-645 (Fitzgerald, J., dissenting) and 645-646 (Ryan, J., dissenting). The justices in the majority in *Poletown* plainly used the phrase "heightened scrutiny" to express to the dissenting justices that they had reviewed the record and the law carefully, and had found support for their conclusion that the taking was constitutional. Unfortunately, however, by suggesting that the scrutiny in *Poletown* was something unusual, the majority also suggested that the case was unusual, and therefore economic development as a public purpose is not constitutionally supportable. This sense that *Poletown* is an anomaly serves as the basis for Judge Murray's criticism in this case. See Appendix A, Murray opinion, slip op at 5-6.

Yet, *Poletown* was not an unusual case because public purpose has always defied a permanent definition in order to respond to changing social circumstances. See *Swan*, *supra* at 438. Public purpose has been described broadly as anything that "has for its objective the promotion of the public health, safety, morals, *general welfare*, *security*, *prosperity*, and contentment of all the inhabitants or residents within the municipal corporation" *Gregory Marina*, *supra* at 396 (Kavanagh, J.), quoting 37 Am Jur, Municipal Corporations, §120, at 734, 735; see also *Swan*, *supra* at (emphasizing government's responsibility to meet the public's need to access to advancements related to wealth and prosperity as justification for takings). Since the Great Depression of the 1930s, it can scarcely be argued that the

public is uninterested in or unaffected by economic stability and development. See, generally, Michigan History, Arts, and Libraries (visited October 27, 2003) <http://www.michigan.gov/hal/0,1607,7-160-17451_18670_18793-53568--,00.html> (providing numerous resources regarding the Great Depression). During the Great Depression and years that followed, governmental agencies engaged in massive – and constitutional – public projects that required taking private property intended primarily to provide jobs and stimulate the economy, not merely to build roads, libraries, schools, and make other improvements.

The Tennessee Valley Authority (“TVA”) is one of the best examples of constitutional governmental efforts to improve economic conditions by taking private property, even when the efforts included transferring property acquired through condemnation to private entities. Congress conceived of the TVA as an “innovative solution” to the harsh economic environment during “the depths of the Great Depression,” and established economic development as its core purpose. See History of the Tennessee Valley Authority (visited October 27, 2003) <<http://www.tva.gov/abouttva/history.htm>>; Economic Development and the Tennessee Valley Authority (visited October 27, 2003) <<http://www.tva.gov/econdev/index.htm>>. As Congress put it, the TVA was created in the “interest of . . . industrial development,” 16 USC 831, and to “promote interstate commerce,” 16 USC 831dd, among other things. In addition to allowing the TVA to take private property, 16 USC 831x, Congress also specifically authorized the President to *sell* the property it acquired in the Tennessee River Basin to “*persons, firms, or corporations who shall contract to erect thereon factories or manufacturing establishments, and who shall contract to purchase of said Corporation electric power for the operation of any such factory or manufacturing establishment.*” 16 USC 831w (emphasis added); see also 16 USC 831dd. The express statutory condition for entering into a contract for the sale of property was that “the land shall be used for industrial purposes only.” 16 USC 831w. Thus, the TVA provided a direct link between the acquisition of private property through the power of eminent domain, the development of

private industry through the sale of land, and the overall benefit the public reaps when economic conditions improve.

Though challenged on constitutional grounds in the federal courts, these takings withstood judicial scrutiny precisely because their public purpose, as conceived by Congress and the TVA, was to encourage economic development. For instance, in *United States ex rel Tennessee Valley Authority v Two Tracts of Land Containing a Total of 146.6 Acres, More or Less, in Loudon Co, Tennessee*, 532 F2d 1083 (CA 6, 1976), the TVA sought to acquire approximately twice the amount of property needed to construct the Tellico Dam and Reservoir. *Id.* at 1084. This project was expected to

“contribute greatly to the industrial development of the area and . . . to follow a land acquisition pattern which will assure that sites needed for industry are reserved for that purpose. . . . Plans for the use of these lands will be developed in full cooperation with State and local officials to insure that sites best suited for industry are not dissipated for less vital purposes and that there are adequate provisions for public and private recreation, homesites, and other purposes. The plan to acquire key lands for industrial and recreation development and resell them as demand for such property increases reflects the public purpose of the project in meeting the serious need for measures to speed growth in employment and general economic development in this part of eastern Tennessee.” [*Two Tracts, supra* at 1085, quoting Hearings on Public Works Appropriations for 1967 before a Subcommittee of the House Committee on Appropriations, 89th Cong, 2d Sess, Pt 2, 761-66 at 765 (1966) (emphasis added).]

Though the property owner argued that this region of Tennessee did not need further industrial development, the United States Court of Appeals for the Sixth Circuit rejected this argument. *Id.* at 1086. As the Court explained, “[I]t is not this Court's position to reappraise the wisdom of congressional policy in this regard. ‘The role of the judiciary in determining whether that power (of eminent domain) is being exercised for public purpose is an extremely narrow one.’” *Id.*, quoting *Berman v Parker*, 348 US 26, 35; 75 S Ct 98; 103 L Ed (1954). *Two Tracts* therefore stands for the proposition that economic development is a constitutionally-sound public purpose for a taking.

Other federal courts, including the United States Supreme Court, have also found the TVA's takings for industrial development intended for a public purpose, and therefore constitutional. See, e.g., *Welch, supra* at 551-552; *United States ex rel Tennessee Valley Authority v 544 Acres of Land, More or Less, in Franklin Co, Tennessee*, 314 F Supp 273 (ED Tenn 1969). Even in *United States ex rel and for Use of Tennessee Valley Authority v Easement and Right-of-Way over 1.8 Acres of Land, More or Less, in Maury Co, Tennessee*, 682 F Supp 353, 358 (MD Tenn 1988), a case similar to *Poletown*, the federal district court concluded that condemning property to construct a power line that would serve a single, private entity (the Saturn automobile plant in Spring Hill, Tennessee) was constitutional because it had a public purpose: selling power to the private entity conferred an economic benefit on the public by lowering other rates.

The TVA projects demonstrate the great degree to which the public works projects during the 1930s undeniably served a public purpose in seeking to improve economic conditions. While the economic conditions in Wayne County do not, at this time, parallel the conditions of the Great Depression or the early 1980s, there is no basis in law to conclude that government must wait until a crisis exists in order to take action that benefits the public. If Wayne County were seeking to replace a crumbling bridge in this case, no court would hold that it would have to wait until the existing bridge collapsed in order to take action. Wayne County is acting more responsibly and more in the interest of the public by making plans that will serve its citizens well into the future without waiting for a crisis to arise.

Defendants, of course, would seek to distinguish the takings required for these federal projects from these takings because, unlike most of these federal projects, Wayne County will not be retaining ownership of all the property condemned for the Pinnacle Project or guaranteeing public access to all the businesses established there. However, this Court has long-recognized the benefit the public reaps when

government and private enterprise act as partners, and the fact that this sort of partnership is often necessary despite the benefit to the private enterprise.

It is unquestionably true that these enterprises [corporations] may be, and probably always are, undertaken with a view to private emolument on the part of the corporators, but it is none the less true that the object of the government in creating them is public utility, and that private benefit, instead of being the occasion of the grant, is but the reward springing from the service. If this be not the correct view, then we confess we are unable to find any authority in the government to accomplish any work of public utility through any private medium, or by delegated authority; yet all past history tells us that governments have more frequently effected these purposes through the aid of companies and corporations than by their immediate agents, and all experience tells us that this is the most wise and economical method of securing these improvements. The grant to the corporation is in no *essential* particular different from the employment of commissioners or agents. The difference is in degree rather than in principle, in compensation rather than in power. . . . [Swan, *supra* at 436 (emphasis in the original).]

In effect, governmental entities with the power to condemn private property are free to take advantage of the services private enterprises offer in order to make benefits available to the public as the circumstances and needs of the day dictate. See *Gregory Marina, supra* at 396 (Kavanagh, J.). This is the very theory that permitted property to be condemned for private corporations to use to develop railroads, highways, bridges, and canals, and which even Justice Ryan discussed approvingly in his *Poletown* dissent. See *Poletown, supra* at 656-666, 670-672; see also *Swan, supra* at 436-437.

Other states have concluded that these public-private partnerships intended to stimulate the local economies serve important public purposes, and therefore justify taking private property, even when that property might be transferred to another private owner. For example, in *Town of Vidalia v Unopened Succession of Ruffin*, 663 So 2d 315, 319 (La App 3 Cir 1995), the Louisiana Court of Appeals determined that taking property to develop a riverfront area with a hotel, commercial enterprises, and retail space served a public purpose, and therefore was constitutional, because the development would

“stimulate economic growth” and “contribute to the general welfare and prosperity of the community of Vidalia.” In *General Bldg Contractors, LLC v Bd of Shawnee Co Com’rs*, 275 Kan 525, 540; 66 P3d 873 (2003), the Kansas Supreme Court held that a home rule county acted constitutionally when condemning property to create an industrial park because industrial parks serve a public purpose by “encouraging economic development” through partnerships with private businesses. Similarly, in *City of Duluth v State*, 390 NW2d 757, 763-764 (Minn 1986), the Minnesota Supreme Court concluded that it was constitutional to condemn private property for the construction of a paper mill because it would assist local economic revitalization. Likewise, the Nevada Supreme Court recently held in *City of Las Vegas Downtown Redevelopment Agency v Pappas*, 76 P3d 1, 7-8, 12 (2003) that it was constitutional to take private property to construct a parking garage controlled by private businesses to contribute to the Freemont Street Experience, a large economic redevelopment project in Las Vegas.

Judge Murray’s cautiousness about the way the power of eminent domain is exercised is laudable, but his underlying premise that *Poletown* stands alone in the canon of case law is simply unsupportable. To the contrary, there are a great many opinions approving takings designed to create economic opportunities in communities by cultivating private business. There may always be examples of private businesses manipulating the power of eminent domain for their own purposes without any benefit to the public, and which are properly found to be unconstitutional. See *Chmelko, supra*. However, in the end analysis, there can be no doubt that economic development is a key public concern for which courts have not hesitated to allow takings.

Critical infrastructure like highways, railroads, and bridges were first-order public needs in the last two centuries as the precursors to the transition from isolated, local or agrarian economies to today’s developed and broader economies. While the need for physical infrastructure persists, the public’s dependence on larger and more interconnected economies have brought government-enterprise

partnerships to the forefront as a way to benefit the public directly. In *City of Grand Rapids v Grand Rapids & IR Co*, 66 Mich 42, 51-52; 33 NW 15 (1887), this Court anticipated this evolution of public need over time and the critical role the power of eminent domain plays in meeting that need. As the Court said, “The exercise of this right [of eminent domain] is regarded as essential to the progress of the country, and the advancement of civilization. A public improvement not thought of to-day may be a public necessity to-morrow.” *Id.*; see also *Swan, supra* at 438. Governmental entities like Wayne County can no more overlook the public’s need for economic stability and development in this century than they could overlook the public’s need for highways, railroads, and bridges in nineteenth century. Meeting this public need drives the Pinnacle Project, and this public purpose makes these takings constitutional.

IV. IF THE COURT OVERRULES POLETOWN, THE DECISION SHOULD BE GIVEN ONLY PROSPECTIVE EFFECT

The Court has asked the parties to address whether “a decision overruling *Poletown, supra*, should apply retroactively or prospectively only, taking into consideration the reasoning in *Pohutski v City of Allen Park*, 465 Mich 675; 641 NW2d 219 (2002).” The League believes that *Poletown* should not be overturned because there is ample authority supporting it, and because doing so would jeopardize the ability to take private property even when the public purpose is undeniable, such as for blight rehabilitation. However, if the Court does overrule *Poletown*, the four-part test in *Pohutski* plainly requires only prospective application of this decision.

In *Pohutski*, this Court held that the Government Tort Liability Act, MCL 691.1407, did not allow a trespass-nuisance exception to statutory governmental immunity. *Pohutski, supra* at 678-679. In reaching that decision, the Court overruled *Hadfield v Oakland Co Drain Com’r*, 430 Mich 139; 422 NW2d 205 (1988). *Pohutski, supra* at 679. The Court observed that “the general rule is that judicial

decisions are given full retroactive effect,” but nevertheless noted that “a more flexible approach is warranted where injustice might result from full retroactivity.” *Id.* at 695. In order to decide whether a decision should be applied only prospectively, the Court identified four factors that should be weighed: “(1) the purpose to be served by the new rule, (2) the extent of reliance on the old rule, and (3) the effect of retroactivity on the administration of justice,” and (4) whether “the decision clearly established a new principle of law.” *Id.* at 696. The Court concluded that the decision was intended to correct previous errors in interpreting MCL 691.1407, a great many decisions had likely been made in reliance on the old rule that had been overturned, and prospective application would minimize the effect of the decision on the administration of justice, including the likelihood that the plaintiffs could not obtain any relief. *Id.* at 696-699. Accordingly, the Court determined that it was appropriate to apply *Pohutski’s* new interpretation of governmental immunity prospectively. *Id.* at 699

In this case, there are a number of compelling factors that weigh heavily in favor of applying any decision overturning *Poletown* prospectively, just as this Court applied *Pohutski* prospectively. Presumably, any decision overturning *Poletown* would effectively hold that Const 1963 art 10, §2 will not permit private property to be taken to be transferred to another private owner, regardless of the public purpose for the taking. This would be a radical new rule, inconsistent with even the very old cases allowing a taking to transfer property to private ownership if there is a public purpose to construct a bridge, highway, railroad or other instrumentality of commerce. See, e.g., *Swan, supra*. There can be little doubt that this would call into question the constitutionality of the Economic Development Corporations Act, MCL 125.1601 *et seq.*, the Downtown Development Authority Act, MCL 125.1651 *et seq.*, the Blighting Property Act, MCL 125.2801 *et seq.*, and other statutes that permit takings but are not directly at issue in this case. Overturning *Poletown* would also have a substantial negative effect on the administration of justice in other condemnation proceedings that have already commenced. An abrupt

turnaround in the state of takings law would force reconsideration of factual and legal issues in these proceedings, and perhaps even the reversal of jury verdicts. A decision that would have such a dramatic unsettling effect must be given prospective application in the interest of justice. See *People v Pasha*, 466 Mich 378, 384; 645 NW2d 275 (2002).

More importantly, *Poletown* has been the law for more than twenty years. Clearly, Wayne County relied on *Poletown* when planning the Pinnacle Project and weighing the possibility that it might not be able to convince all the property owners in the affected area to sell their land voluntarily. It is also highly likely that other public corporations, state agencies, and even the state itself have relied on *Poletown* when determining whether to plan and execute projects that involve takings. Overturning *Poletown* would mean that the state and these entities would be forced to abandon projects in which they have already invested substantial time and money, and which they have no possibility of completing without the takings. Both the harsh effect and surprise of overturning precedent that has been uncontradicted for more than twenty years requires prospective application of a decision overturning *Poletown* in this case. See *People v Doyle*, 451 Mich 93, 104-108; 545 NW2d 627 (1996); *Tebo v Havlik*, 418 Mich 350, 364; 343 NW2d 181 (1984).

V. CONCLUSION


There can be no doubt that requiring clear and significant evidence of public purpose as the legal standard for constitutional takings, as discussed and applied in *Poletown*, works generally, and worked well in this case. The fact that this standard has a longstanding basis in Michigan precedent only reveals its resilience, flexibility, and therefore its effectiveness in sorting the constitutional takings from the unconstitutional takings. The evidence Wayne County presented in the trial court overwhelmingly demonstrated that the public would reap a clear and significant benefit from the Pinnacle Project in the

form of economic stability and development, and therefore that these takings are for a public purpose. The constitution requires no more than this.

The League respectfully asks that the Court clarify the plain meaning of MCL 213.23 and the clear and significant standard used to determine the constitutionality of taking private property for a public purpose, affirm the takings in this case, and grant any other relief as is just and proper.

Respectfully submitted,

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Dated: December 10, 2003

**APPENDIX TO *AMICUS CURIAE* BRIEF OF
MICHIGAN MUNICIPAL LEAGUE**

Appendix A	=	<i>Wayne Co v Hathcock</i> , unpublished opinion per curiam of the Court of Appeals, issued April 24, 2003 (Docket Nos. 239438, 239563, 240184, 240187, 240189, 240190, 240193, 240194, 240195)
Appendix B	=	Resolution of Necessity and Certification
Appendix C	=	Trial Court Opinion
Appendix D	=	Wayne County Charter

STATE OF MICHIGAN
COURT OF APPEALS

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

EDWARD HATHCOCK,

Defendant-Appellant.

UNPUBLISHED
April 24, 2003

No. 239438
Wayne Circuit Court
LC No. 01-113583-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

AARON T. SPECK and DONALD E. SPECK,

Defendants-Appellants.

No. 239563
Wayne Circuit Court
LC No. 01-114120-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

AUBINS SERVICE, INC., and DAVID R. YORK,
Trustee of the DAVID R. YORK REVOCABLE
LIVING TRUST,

Defendants-Appellants.

No. 240184
Wayne Circuit Court
LC No. 01-113584-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

JEFFREY J. KOMISAR,

Defendant-Appellant.

No. 240187
Wayne Circuit Court
LC No. 01-113587-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

ROBERT WARD and LELA WARD,

Defendants-Appellants,

and

HENRY Y. COOLEY,

Defendant.

No. 240189
Wayne Circuit Court
LC No. 01-114113-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

MRS. JAMES GRIZZLE and
MICHELLE A. BALDWIN,

Defendants-Appellants,

No. 240190
Wayne Circuit Court
LC No. 01-114115-CC

and

RAMI FAKHOURY,

Defendant.

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

STEPHANIE A. KOMISAR,

Defendant-Appellant.

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

THOMAS L. GOFF, NORMA GOFF,
MARK A. BARKER, JR., and
KATHLEEN A. BARKER,

Defendants-Appellants.

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

VINCENT FINAZZO,

Defendant-Appellant,

and

AUBREY L. GREGORY and DULCINA
GREGORY,

Defendants.

No. 240193
Wayne Circuit Court
LC No. 01-114122-CC

No. 240194
Wayne Circuit Court
LC No. 01-114123-CC

No. 240195
Wayne Circuit Court
LC No. 01-114124-CC

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendants appeal by leave granted from the circuit court's order denying defendants' motion for summary disposition in this condemnation action. This matter involves plaintiff's proposed acquisition of real property adjacent to Detroit Metropolitan Airport. We affirm.

I. FACTS AND PROCEEDINGS

The real property at issue lies directly south of the airport's newest midfield terminal, and encompasses approximately 1,300 acres of largely empty and unused real property. Plaintiff's proposed development for the property is called "the Pinnacle Project" or "the Pinnacle Aeropark Project." Huron Township extends over about two-thirds of the project's land area, and the rest lies within the city of Romulus. Only two percent of the project area involves the defendant owners in the present action. Plaintiff already holds title to the rest of the project area, or soon will.

In December 1992, the Federal Aviation Administration (FAA) began a program to help adjacent landowners either adjust to the presence of a new air terminal at the airport or sell their land. The FAA gave plaintiff \$21 million in federal funds to purchase 500 acres of the adjacent property from those who would sell, conditioned on the requirement that plaintiff make the property economically viable.¹ In 1998, plaintiff formed the idea to construct a combination technology and industry park, business center, hotel and conference center, and recreational facility. Plaintiff billed the project as a "world-class development" that would be particularly attractive because it is next to one of the "largest airports in the world." According to plaintiff, the benefits of the project included generating thousands of jobs; increasing the tax base by tens of millions of dollars; expanding the tax base from largely industrial to mixed industrial, service, and technological; and improving the county's image, which would in turn draw more companies to the area and help fund plaintiff's delivery of services to its residents. A consulting company plaintiff hired found that 30,000 jobs and \$350 million would be generated by the Pinnacle Project over time.

Plaintiff secured approval of the project and a promise for funding from the state of Michigan. In June 2000, the Legislature passed "smart park legislation" encouraging the technology industry to partner with Michigan universities and form technology zones in Michigan. In April 2001, the Michigan Economic Development Corporation (MEDC) selected plaintiff's project proposal for designation as one of the few "smart parks" in Michigan.

According to plaintiff, when defendants refused two good faith offers for purchase of their property, plaintiff adopted a "Resolution of Necessity and Declaration of Taking" that authorized it to condemn defendants' land and acquire it by eminent domain. In April 2001, plaintiff filed the present individual complaints for condemnation, and defendants filed motions

¹ Defendants argue that the FAA was specifically concerned about noise abatement, not redevelopment of the property.

challenging the complaints on the ground of necessity. The trial court treated the multiple actions as consolidated and discovery began. Defendants argued that because plaintiff had not decided on specific uses for the property yet and because the property had yet to be rezoned, plaintiff's condemnation action must fail. Plaintiff replied that only defendants' refusal to relinquish their property stood in the way of plaintiff's completion of the project, despite the fact that the future buyers of the property were not yet determined.²

Following an evidentiary hearing, defendants filed a motion for summary disposition. The trial court denied the motion, holding that plaintiff could proceed with the condemnation and taking. Defendants' motion for reconsideration was also denied. This Court consolidated these appeals for review.

II. ANALYSIS

Generally, we review de novo issues arising from statutory interpretation, constitutional questions, and summary disposition determinations. *Silver Creek Drain Dist v Extrusions Div, Inc*, 245 Mich App 556, 562; 630 NW2d 347 (2001); *City of Novi v Robert Adell Children's Funded Trust*, 253 Mich App 330, 333; ____ NW2d ____ (2002); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim and is reviewed to determine whether the affidavits, pleadings, depositions, or any other documentary evidence establish a genuine issue of material fact to warrant a trial. *Spiek, supra* at 337, citing *Singerman v Municipal Bureau, Inc*, 455 Mich 135, 138; 565 NW2d 383 (1997). However, with regard to condemnation actions, a trial court's findings and conclusions will not be reversed unless they are clearly erroneous. *City of Troy v Barnard*, 183 Mich App 565, 569; 455 NW2d 378 (1990); see also MCR 2.613(C).

A state may not deprive any person of life, liberty, or property without due process, including taking private property for purportedly public use without just compensation. US Const, Am V, XIV; Const 1963, art 10, § 2; *Adams Outdoor Advertising v East Lansing*, 463 Mich 17, 23; 614 NW2d 634 (2000). "The state's power to take private property is called its power of eminent domain or condemnation." *Tolksdorf v Griffith*, 464 Mich 1, 7; 626 NW2d 163 (2001).

To be constitutional, a condemnation must be authorized, necessary, and for a public purpose. MCL 213.25; MCL 213.56(1), (2); *Lansing v Edward Rose Realty, Inc*, 442 Mich 626, 631-633; 502 NW2d 638 (1993). Defendants raise each of these issues on appeal. However, analysis of these issues is intertwined and recycles to a determination of whether the condemnation fits a public purpose. See MCL 213.23; *Edward Rose Realty, supra* at 631-635. Thus, the majority of our discussion will focus on the public purpose issue.

A. GENERAL AUTHORITY FOR CONDEMNATION

² According to the trial court's opinion, utility installation and road improvements for the Pinnacle Project were set for spring and summer 2002. There is no information in the record regarding whether these plans materialized.

We first note that MCL 213.21 *et seq.* confers the power of eminent domain on plaintiff to authorize the taking of the private property in this case. MCL 213.23 states in pertinent part:

Any public corporation or state agency is authorized to take private property [1] for a public improvement or [2] for the purposes of its incorporation or [3] for public purposes within the scope of its powers for the use or benefit of the public and to institute and prosecute proceedings for that purpose.^{3]}

First, the statute clearly states that “[a]ny public corporation or state agency *is authorized* to take private property.” *Id.*⁴ Plaintiff is a “public corporation.” See MCL 213.21; see also, e.g., MCL 141.103(a) (provision of the revenue bond act defining “public corporation” to include a “county”).⁵ Thus, the power of eminent domain is granted to plaintiff by the opening phrase of the statute. See also MCL 46.184 (referencing MCL 213.21 *et seq.* as granting authority to condemn property). Therefore, assuming plaintiff satisfies the remaining two prongs of the eminent domain analysis – necessity and public purpose – the condemnation at issue is valid. See *Silver Creek Drain Dist*, *supra* at 563 (plain language of a statute controls interpretation).

Furthermore, as plaintiff and the trial court noted, there have been cases in which MCL 213.21 *et seq.* was upheld as the sole lawful authority for a taking. See, e.g., *Charter Twp of Delta v Eyde*, 389 Mich 549; 208 NW2d 168 (1973) (condemnation action brought solely under MCL 213.21 *et seq.*); *Union School Dist of Jackson v Starr Commonwealth for Boys*, 322 Mich 165, 168-169, 170; 33 NW2d 807 (1948) (“Act No. 149 [MCL 213.21 *et seq.*] . . . empowers public corporations to exercise the right of eminent domain”). As a result, the fact that there may have been more specific statutes available for plaintiff other than MCL 213.21 *et seq.* is of no consequence. See, e.g., *In re Opening of Gallagher Ave*, 300 Mich 309; 1 NW2d 553 (1942) (more specific condemnation statute enacted after MCL 213.21 *et seq.* did not implicitly repeal it); *In re Warren Consolidated Schools, Macomb and Oakland Cos*, 27 Mich App 452, 453-454;

³ The parties only address the first and third condemnation bases listed in the statute.

⁴ The rules of statutory construction are well established:

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature’s intent. If the plain and ordinary meaning of a statute is clear, judicial construction is neither necessary nor permitted. We may not speculate regarding the probable intent of the Legislature beyond the words expressed in the statute. When reasonable minds may differ with respect to the meaning of a statute, the courts must look to the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the purpose of the statute. [*Silver Creek Drain Dist*, *supra* at 562-563 (citations omitted).]

⁵ See *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998) (statutes discussing the same topic, like the revenue bond act and MCL 213.21 *et seq.*, are read together *in pari materia* – as one law).

183 NW2d 587 (1970) (condemnation brought solely under alternative MCL 213.21 *et seq.* was permissible despite existence of another authorizing statute).⁶

B. NECESSITY

The second issue defendants raise on appeal is whether the circuit court erred in concluding that it is necessary for plaintiff to condemn the property in question. We hold that the court did not err on this ground.

There are two types of necessity. One is whether the proposed use, purpose, or improvement itself (the Pinnacle Project) is necessary. See *Grand Rapids Bd of Ed v Baczewski*, 340 Mich 265, 270-271; 65 NW2d 810 (1954), quoting *In re Jefferies Homes Housing Project*, 306 Mich 638, 647; 11 NW2d 272 (1943). The second type of necessity is whether *the taking of the individuals' real property* is necessary for that use, purpose, or improvement (i.e., whether defendants' property is necessary for the Pinnacle Project). *Barnard, supra* at 572, citing *Nelson Drainage Dist v Filippis*, 174 Mich App 400, 406; 436 NW2d 682 (1989). As will be discussed further in our public purpose analysis, *infra*, we hold that the Pinnacle Project is necessary for the people of Wayne County, and that defendants' property is necessary for the Pinnacle Project.⁷

Defendants' only argument concerning this issue is that the Pinnacle Project is merely a speculative project, and, therefore, the "necessary" requirement for eminent domain is defeated. Stated another way, defendants' only contention concerning the "necessary" element is that the exact plans for the Pinnacle Project have not been finalized. Because they have not been finalized, it is unknown whether the taking of the individual defendants' property is necessary to complete the Pinnacle Project. We find this argument to be specious because by the very nature of an action for condemnation for a proposed development, the development is unfinished. While the eventual tenants of the Pinnacle Project are unknown, the technology park and its boundaries are known. At any rate, plaintiff's agents testified that the wetland analysis, utility groundwork and plan, and storm water concerns have either been completed or resolved. The

⁶ See also MCL 259.108 *et seq.* (the Public Airport Authority Act, authorizing condemnation for aeronautical purposes); *Silver Creek Drain Dist, supra* at 562 ("Michigan has adopted the . . . UCPA [the Uniform Condemnation Procedures Act, MCL 213.51 *et seq.*] . . . which provides procedures for the condemnation, acquisition, or exercise of eminent domain of real property by public agencies.").

⁷ In our view, taking defendants' property, which is next to the airport, is "necessary" to the Pinnacle Project simply because the project area encompasses defendants' property. It would appear to be strategically difficult to build this complex commercial development literally around defendants' largely vacant properties. Cf. *Robert Adell Children's Funded Trust, supra* at 351, quoting *Poletown Neighborhood Council v Detroit*, 410 Mich 616, 675-676; 304 NW2d 455 (1981) (Ryan, J., dissenting) ("A railway cannot run around unreasonable landowners."). Put another way, the developers likely will not go through with the project if plaintiff does not acquire defendants' property, and the entire project might be lost. Thus, "the project needs the property involved." *Barnard, supra* at 569; see also *Nelson Drainage, supra*.

project is sufficiently far along that this Court believes it will come to fruition, and the specific area that the park will occupy is known. Thus, defendants' necessity argument fails.

C. PUBLIC PURPOSE

The third and controlling issue is whether the circuit court erred in concluding that the condemnation of defendants' property serves a public purpose.⁸ We hold that the Pinnacle Project serves a public purpose that predominates over any incidental private benefit.

Because the city passed ordinance 753 [authorizing the condemnation at issue] without an express delegation of authority by the state, we may review the city's asserted public purpose. Judicial deference granted state legislative determinations of public use is not similarly employed when reviewing determinations of public purpose made by a municipality pursuant to broad, general enabling statutes. [*Edward Rose Realty, supra* at 637; see also *City of Center Line v Chmelko*, 164 Mich App 251, 260; 416 NW2d 401 (1987) ("the 'public use' question is ultimately a judicial one"); *Cleveland v Detroit*, 322 Mich 172, 179; 33 NW2d 747 (1948) (public purpose is an issue for a reviewing court).]

While the specific private interests that may benefit from the Pinnacle Project are unknown at this time, for purposes of this discussion, we will assume that eventually at least one private interest will benefit from the project. Therefore, we will apply the heightened scrutiny test. "Where, as here, the condemnation power is exercised in a way that benefits specific and identifiable private interests, a court inspects with *heightened scrutiny* the claim that the public interest is the predominant interest being advanced." *Poletown Neighborhood Council v Detroit*, 410 Mich 616, 634-635; 304 NW2d 455 (1981) (emphasis added), cited in *Chmelko, supra* at 257.

The terms "public use" and "public purpose" (employed by MCL 213.23) are synonymous. *Poletown, supra* at 629-630. In *Tolksdorf, supra* at 8-9, our Supreme Court held:

The next question is whether the taking authorized . . . is constitutionally permissible. Private property may not be taken for a private purpose. *Shizas v Detroit*, 333 Mich 44, 50; 52 NW2d 589 (1952). . . .

In *Poletown*, this Court set forth the analysis used when a taking benefits both private entities and the public:

["]The power of eminent domain is restricted to furthering public uses and purposes and is not to be exercised without substantial proof that the public is

⁸ See MCL 213.23 ("Any public corporation or state agency is authorized to take private property [1] for a public improvement or . . . [3] for *public purposes* within the scope of its powers for the *use or benefit of the public*[.]"); *Barnard, supra* at 569-570 ("public necessity" required for valid condemnation).

primarily to be benefited. . . . Such public benefit cannot be speculative or marginal but must be clear and significant if it is to be within the legitimate purpose as stated by the Legislature.["] [*Id.* at 634-635.]

Hence, the question becomes whether the public interest advanced here, access to landlocked property, is the predominant interest advanced. [*Tolksdorf, supra*; see also *Edward Rose Realty, supra* at 631-633.]

Furthermore, the *Poletown* Court opined:

There is no dispute about the law. All agree that condemnation for a public use or purpose is permitted. All agree that condemnation for a private use or purpose is forbidden. Similarly, condemnation for a private use cannot be authorized whatever its incidental public benefit and condemnation for a public purpose cannot be forbidden whatever the incidental private gain. The heart of this dispute is whether the proposed condemnation is for the primary benefit of the public or the private user. [*Poletown, supra* at 632.]

However, the fact that a government entity eventually transfers condemned property to a private entity is not dispositive either. See *In re Slum Clearance in Detroit*, 331 Mich 714, 721-722; 50 NW2d 340 (1951); *Cleveland, supra*.

We conclude that plaintiff does not have the primary intention "to confer a private use or benefit" with the taking at issue. *Chmelko, supra* at 259. Rather, plaintiff seeks to advance the interests of the people of Wayne County with the Pinnacle Project.

Plaintiff stated its public purposes for the Pinnacle Project as follows: generating thousands of jobs; increasing the tax base by tens of millions of dollars; expanding the tax base from largely industrial to mixed industrial, service, and technological; and improving the county's image, which would in turn draw more companies to the area and help fund plaintiff's delivery of services to its residents. Plaintiff argued that the area needed these improvements because businesses were steadily leaving the area, making its economy progressively worse.

These reasons qualify as "public improvements" and "public purposes within the scope of [plaintiff's] powers." MCL 213.23; cf. MCL 141.103(b) (revenue bond act provision defining "public improvements" to include including housing facilities, transportation systems, sewage and industrial disposal systems, utility systems, telephone systems, automobile parking facilities, convention halls, recreational facilities, and aeronautical facilities); see also MCL 117.4e(1), (2) (home rule city may provide for power of condemnation to supply various services "for any public use or purpose within the scope of its powers, whether herein specifically mentioned or not").

Our review of our Supreme Court's decision in *Poletown* reveals that it is similar to and different from the present case in important ways. First, *Poletown* supports plaintiff's proposed taking because of the factual similarities to the present case that make economic revitalization a

valid public purpose. *Id.* at 633-634. In *Poletown*, our Supreme Court held that under the supervision of the MEDC, the government's stated public purpose of establishing industrial and commercial zones in condemning property for transfer to other private parties was permissible. *Id.* at 630-631, 634-635. Furthermore, the public purpose of revitalizing a downtrodden area was also permissible, similar to the present case. *Id.* at 634-635. Indeed, Pinnacle Project tenants will largely benefit the public, with a multitude of jobs and services, as well as increased tax revenue.

In the instant case the benefit to be received by the municipality invoking the power of eminent domain is a clear and significant one and is sufficient to satisfy this Court that such a project was an intended and a legitimate object of the Legislature when it allowed municipalities to exercise condemnation powers even though a private party will also, ultimately, receive a benefit as an incident thereto.

The power of eminent domain is to be used in this instance primarily to accomplish the essential public purposes of alleviating unemployment and revitalizing the economic base of the community. The benefit to a private interest is merely incidental. [*Id.* at 634, see also 636-637, and 645, n 15 (Fitzgerald, J., dissenting) (listing economic statistics regarding Hamtramck's blight that are similar to those in the present case).]

See also, e.g., MCL 125.2162a (the MEDC may designate and facilitate construction of "technology parks" to provide a variety of community services).

Second, however, our review of *Poletown* also reveals a significant difference between that case and the present case. In *Poletown*, a major corporation sought condemnation of real property by way of the city of Hamtramck. See *id.* at 636 (Ryan, J., dissenting), and 644 (Fitzgerald, J., dissenting) (noting that a single known private entity petitioned the city for help in finding a factory site); see also *Edward Rose Realty, supra* at 637 ("Thus, we scrutinize the city's actions bearing in mind that . . . ordinance 753 is directed toward and would benefit a single private entity . . ."). In the present case, the county – and no identified or individual private company – is instigating and developing the taking of defendants' property. Nor was the present "taking . . . merely . . . an attempt by a private entity to use the state's powers 'to acquire what it could not get through arm's length negotiations with defendants.'" *Tolksdorf, supra* at 10; see also *Edward Rose Realty, supra* at 631; *Chmelko, supra* at 262-263 ("pretense" of public purpose advanced by city failed). Thus, in one sense, the present taking is even more supportable than the one in *Poletown*.

A survey of other relevant cases is also helpful. Specifically, *Chmelko*, *Barnard*,⁹ *Edward Rose*, and *Tolksdorf, supra*, are factually distinguishable from the present case. *Chmelko* involved a very narrow benefit primarily to a private party, a car dealership that wanted more parking space. *Id.* at 258, 262-263. That factual scenario is dissimilar to the present case.

⁹ Because *Chmelko* and *Barnard* were decided before November 1, 1990, we are not bound to follow the rules of law established in those cases. See MCR 7.215(I)(1).

In *Barnard, supra* at 572-573, the city wished to acquire more land than necessary for a sidewalk, with no future plan for the excess land. That is not the case with the Pinnacle Project either. *Edward Rose* concerned a condemnation for cable service easements on private property. *Id.* at 628-629. Thus, that case can be contrasted also. Finally, *Tolksdorf* related to the private roads act that forced access across private property to landlocked parcels. *Id.* at 4, 7-8. Consequently, *Poletown* is the most factually on point to the present case, and, thus, precedentially binding. After all, the condemnation in *Poletown* was for an “industrial park.” *Id.* at 637 (Fitzgerald, J., dissenting).

III. CONCLUSION

Our determination that this project falls within the public purpose, as stated by the Legislature, does not mean that every condemnation proposed by an economic development corporation will meet with similar acceptance simply because it may provide some jobs or add to the industrial or commercial base. If the public benefit was not so clear and significant, we would hesitate to sanction approval of such a project. . . . We hold this project is warranted on the basis that its significance for the people of Detroit and the state has been demonstrated. [*Id.* at 634-635.]

Under the heightened scrutiny test of *Poletown*, plaintiff’s stated public purposes survive because plaintiff has provided “substantial proof that the public is primarily to be benefited.” See *Tolksdorf, supra* at 8-9. Therefore, the trial court did not clearly err in finding a public purpose in this matter, and plaintiff’s proposed taking is constitutional. *Barnard, supra* at 569; *Robert Adell Trust, supra* at 333-334.

Affirmed. No taxable costs pursuant to MCR 7.219, a question of public policy being involved.

/s/ Peter D. O’Connell

STATE OF MICHIGAN

COURT OF APPEALS

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

EDWARD HATHCOCK,

Defendant-Appellant.

UNPUBLISHED

April 24, 2003

No. 239438

Wayne Circuit Court

LC No. 01-113583-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

AARON T. SPECK and DONALD E. SPECK,

Defendants-Appellants.

No. 239563

Wayne Circuit Court

LC No. 01-114120-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

AUBINS SERVICE, INC. and DAVID R. YORK,
Trustee of the DAVID R. YORK REVOCABLE
LIVING TRUST,

Defendants-Appellants.

No. 240184

Wayne Circuit Court

LC No. 01-113584-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

JEFFREY J. KOMISAR,

Defendant-Appellant.

No. 240187
Wayne Circuit Court
LC No. 01-113587-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

ROBERT WARD and LELA WARD,

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COUNTY OF WAYNE,

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No. 240195
Wayne Circuit Court
LC No. 01-114124-CC

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

MURRAY, J. (concurring).

I concur in the reasoning and result of the Court's opinion because I believe that it is compelled by the binding precedent which we are required to apply to the facts as found by the trial court. See *People v Kevorkian*, 205 Mich App 180, 191; 517 NW2d 293, vacated on other grounds, 497 Mich 436; 527 NW2d 714 (1994) (recognizing that this Court must follow Supreme Court precedent until it is overturned by that Court). I write separately, however, because I believe with all due respect, as have other panels of this Court,¹ that the Supreme Court's decision in *Poletown Neighborhood Council v Detroit*, 410 Mich 616; 304 NW2d 455 (1981) was wrongly decided with respect to its constitutional determination that the power of eminent domain can be utilized to take private property and convey it for the use of other private entities in the name of improving the economy. In *Poletown*, Justices Fitzgerald and Ryan submitted dissenting opinions outlining the procedural irregularities and substantive errors in the majority opinion. See *Poletown, supra*, 410 Mich at 636-645 (Fitzgerald, J., dissenting) and at 645-684 (Ryan, J., dissenting). Although both of these dissenting opinions more than adequately explain why the *Poletown* majority's decision is flawed and out of step with prior Supreme Court precedent, Justice Ryan's dissent in particular delineates in great detail and precision why the majority opinion was wrongly decided.

Setting aside Justice Ryan's discussion of how the *Poletown* majority blurred the previously bright distinction in the case law between what constitutes a "public purpose" for tax purposes and a "public use" for condemnation purposes, see *Novi v Robert Adell Children's Funded Trust*, 253 Mich App 330, 342; ___ NW2d ___ (2002), Justice Ryan set forth the clear line of authority in existence prior to *Poletown* which had held that the government cannot constitutionally exercise its power of eminent domain by taking land for the ultimate conveyance to a private corporation despite incidental economic benefits to the public:

As a general rule, when the object of eminent domain is to take land for ultimate conveyance to a private corporation to use as it sees fit, the State Constitution will forbid it as a taking for private use.

"Land cannot be taken, under the exercise of the power of eminent domain, unless, after it is taken, it will be devoted to the use of the public, independent of the will of the corporation taking it." *Berrien Springs Water-Power Co v Berrien Circuit Judge*, 133 Mich 48, 53; 94 NW 379 (1903).

¹ See *Detroit v Vavro*, 177 Mich App 682, 685-687; 442 NW2d 730 (1989). See also *Detroit v Lucas*, 180 Mich App 47, 54; 446 NW2d 596 (1989) (Beasley, P.J., dissenting, indicating that "[h]opefully, the Supreme Court will, in due course, accept the challenge to reexamine the basis for the *Poletown* decision").

Accordingly, land may not be condemned for private corporations engaged in the business of water-power mills, *Ryerson v Brown*, 35 Mich 333 (1877); cemeteries, *Board of Health v Van Hoesen*, 87 Mich 533; 49 NW 894 (1891); or general retail, *Shizas v Detroit*, 333 Mich 44; 52 NW2d 589 (1952). [*Id.* at 670.]

The *Poletown* decision was, therefore, the first Michigan case to hold that economic benefits emanating from future private developments was a valid exercise of eminent domain despite the land being granted to a private entity. However, as both the majority and dissenting opinions in *Poletown* make clear, that case was based upon the extreme economic and political circumstances faced by the city of Detroit during that specific time period. See *id.* at 633 (majority noting the “severe economic conditions facing the residents”) and at 647 (Justice Ryan noting case arose in the context of an “economic crisis”). When *Poletown* was decided unemployment statewide was at 14.2%, the city of Detroit was at 18%, and amongst African-American residents of the city, it was almost 30%. *Id.* at 647. Moreover, General Motors was threatening to *close and move* one of its plants outside the city which would result in the *loss* of some 6,000 additional jobs within the city. *Id.* at 650-651. It was under these drastic economic circumstances that the Court held that the city’s taking of private land for use by a specific private entity (General Motors) was for a “public use or purpose,” and only had an incidental benefit to private persons (GM) because it would *preserve* the 6,000 General Motor jobs and tax base that would otherwise have allegedly left the city. *Id.* at 634.

However, as Justice Ryan pointed out, the Court’s “approval of the use of eminent domain power in this case [took] this state into a new realm of takings of private property; there [was] simply no precedent for this decision in previous Michigan cases.” *Id.* at 639-640. Continuing, Justice Ryan noted that although “[t]here were several early cases in which there was an attempt to transfer property from one private owner to another through the condemnation power pursuant to express statutory authority,” the Court had previously rejected such proposed takings as unconstitutional. *Id.* at 640. Nonetheless, the *Poletown* majority held as it did, and we are duty bound to apply its holding and rationale to this case. *Kevorkian, supra; Adell Trust, supra* at 343.

However, I believe that this case represents the concerns that Justices Fitzgerald and Ryan had with respect to the jurisprudential impacts of the *Poletown* decision. *Id.* at 645. Specifically, unlike in *Poletown*, in this case there is no abnormally high unemployment rates as there were at the time *Poletown* was decided; nor was there a major employer threatening to leave the confines of Wayne County, as there was in *Poletown*. In other words, there is no evidence in the record to establish that there exists any “economic crisis” in Wayne County which would make this case an “exceptional one” like *Poletown*. Instead, plaintiff has simply decided to create a commercial/industrial park on the basis that it would improve the overall appeal of the county and eventually raise the tax and employment base for the county. Although that is certainly a laudable goal, in my view the precedent established by our Supreme Court prior to its *Poletown* decision would have precluded it on constitutional grounds.²

² It is evident that the Legislature deems certain industrial and commercial developments necessary and that private property can be condemned for this public use by an economic development corporation. MCL 125.1601; 125.1622. However, the county did not act pursuant (continued...)

In light of the foregoing, I agree with our Court's prior decision in *Vavro*, as well as Judge Beasley's dissent in *Lucas*, that our Supreme Court should revisit its holding in *Poletown* as it is an isolated statement based upon exceptional circumstances, which cannot be squared with long standing precedent established in almost a century of case law prior thereto.³

/s/ Christopher M. Murray

(...continued)

to such specific statutory authority, but instead acted only pursuant to its resolution. Hence, the "heightened scrutiny" given to such general resolutions is applicable to this case. *Center Line v Chmelko*, 164 Mich App 251, 257-262; 416 NW2d 401 (1987).

³ *Poletown* was cited with approval as recently as *Tolksdorf v Griffith*, 464 Mich 1, 8-9; 626 NW2d 163 (2001). However, that case involved the validity of a taking under the private roads act. *Id.* at 5. Hence, *Tolksdorf* did not involve an analysis of whether economic benefits constitutionally validates the exercise of eminent domain over private property for the benefit of private economic development.

STATE OF MICHIGAN
COURT OF APPEALS

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

EDWARD HATHCOCK,

Defendant-Appellant.

UNPUBLISHED

April 24, 2003

No. 239438

Wayne Circuit Court

LC No. 01-113583-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

AARON T. SPECK and DONALD E. SPECK,

Defendants-Appellants.

No. 239563

Wayne Circuit Court

LC No. 01-114120-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

AUBINS SERVICE, INC. and DAVID R. YORK,
Trustee of the DAVID R. YORK REVOCABLE
LIVING TRUST,

Defendants-Appellants.

No. 240184

Wayne Circuit Court

LC No. 01-113584-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

JEFFREY J. KOMISAR,

Defendant-Appellant.

No. 240187
Wayne Circuit Court
LC No. 01-113587-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

ROBERT WARD and LELA WARD,

Defendants-Appellants,

and

HENRY Y. COOLEY,

Defendant.

No. 240189
Wayne Circuit Court
LC No. 01-114113-CC

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

MRS. JAMES GRIZZLE and
MICHELLE A. BALDWIN,

Defendants-Appellants,

No. 240190
Wayne Circuit Court
LC No. 01-114115-CC

and

RAMI FAKHOURY,

Defendant.

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

STEPHANIE A. KOMISAR,

Defendant-Appellant.

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

THOMAS L. GOFF, NORMA GOFF,
MARK A. BARKER, JR., and
KATHLEEN A. BARKER,

Defendants-Appellants.

COUNTY OF WAYNE,

Plaintiff-Appellee,

v

VINCENT FINAZZO,

Defendant-Appellant,

and

AUBREY L. GREGORY and DULCINA
GREGORY,

Defendants.

No. 240193
Wayne Circuit Court
LC No. 01-114122-CC

No. 240194
Wayne Circuit Court
LC No. 01-114123-CC

No. 240195
Wayne Circuit Court
LC No. 01-114124-CC

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

FITZGERALD, J. (*concurring*).

I concur with and join in Judge Murray's concurring opinion.

/s/ E. Thomas Fitzgerald

CERTIFICATION

STATE OF MICHIGAN)
)
CHARTER COUNTY OF WAYNE)

I, Alfred N. Montgomery, Clerk of the County Commission for the Charter County of Wayne, State of Michigan, do hereby certify that the attached Resolution No. 2000-407, *approving a Resolution of Necessity and Declaration of Taking to acquire, through condemnation, property to complete the project area acquisition for the development of the Pinnacle Aeropark of Wayne County*, was duly adopted by the Wayne County Commission at the SEVENTH DAY EQUALIZATION SESSION on the TWELFTH DAY of JULY, 2000 by the following vote:

YEAS: Commissioners Bankes, A. Bell, Blackwell, Boike, Palamara, Varga, Vice-Chair Beard, Chairman Solomon -- 8

NAYS: Commissioners Hubbard, Husk, Sullivan -- 3

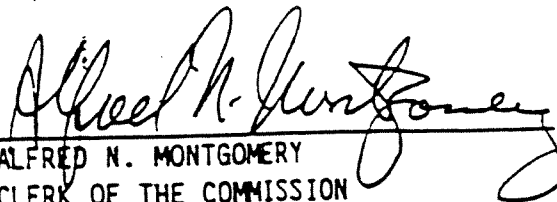
NOT VOTING: None

ABSTAIN: Vice-Chair Pro Tempore Ware -- 1

EXCUSED: Commissioners Cavanagh, Cushingberry, Parker -- 3

I further certify that the attached Resolution is a true, correct, and complete transcript of the original of said Resolution appearing on file and of record in my office and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, as amended, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the County of Wayne this 16th day of November, 2000 A.D.


ALFRED N. MONTGOMERY
CLERK OF THE COMMISSION
CHARTER COUNTY OF WAYNE, MI



RESOLUTION

No. 2000-407

By Commissioner Cavanagh

WHEREAS, the County of Wayne ("County") has established as public purposes: (i) the creation of jobs for its citizens; (ii) the stimulation of private investment and redevelopment in the County to insure a healthy and growing tax base so that the County can fund and deliver critical public services, (iii) stemming the tide of disinvestment and population loss; and (iv) supporting development opportunities that would otherwise remain unrealized; and

WHEREAS, the County intends to acquire and improve certain land which is located in Huron Charter Township and the City of Romulus, and described in Exhibit "A" attached hereto ("Project Area");

WHEREAS, the Project Area will be used to develop the Pinnacle Aeropark of Wayne County ("Project"), a mixed use business park, with the focus being the development of light manufacturing and research and development facilities and open use land; and

WHEREAS, County Resolution 99-265 authorizes the County Executive to use certain monies in the Equipment Lease Financing "ELF" Account for purpose of land acquisition for the Project; and

WHEREAS, in order to construct the Project, it is necessary to acquire approximately 1,200 acres of property within the Project Area;

WHEREAS, the County intends to construct certain facilities on several of the parcels of property described herein to assist in the expansion of Detroit Metropolitan Wayne County Airport;

WHEREAS, the County intends to construct, improve and maintain roads and highways on several of the parcels of property described herein;

WHEREAS, the County intends to construct, improve and maintain storm drainage ditches and other storm drainage facilities on several of the parcels of property described herein;

WHEREAS, the parcels of property described herein will be acquainted in accordance with applicable federal and state law, including, without

mitation Public Act 149 of 1911, MCL 213.21 et seq., Public Act 352 of 1925, . 213.171 et seq.; Public Act 283 of 1909, MCL 220.1 et seq.; Public Act 40 of 56, MCL 280.1 et seq.; Public Act 327 of 1945, MCL 259.1 et seq.; as well as applicable rules and regulations of federal and state agencies ("Applicable laws"); and the property will be appraised by independent appraisers; said appraisals will be reviewed by a review appraiser; and the County will make good faith offers of just compensation of not less than its appraisal of just compensation for the property; and

WHEREAS, it is necessary to take the private property described herein for the development of the Project and for such other purposes state above;

Now therefore be it

RESOLVED, by the Wayne County Commission this 12th day of July, 2000 that:

. It is in the public interest that the County establish as a public purpose of the following objectives:

- (a) The creation of jobs for all segments of the Wayne County work force, including the establishment of work force participation standards, requirements, procedures and mechanisms which assure that workers from economically distressed areas of the County shall have an equal opportunity for jobs made available by the Project and by similar projects which are enabled by the Project;
- (b) The diversification of investment and business opportunities for all segments of the County's business community;
- (c) The stimulation of private investment and redevelopment in the County to insure a healthy and growing tax base so that the County can fund and deliver other critical public services;
- (d) Stemming the past tide of population loss and disinvestment;
- (e) Supporting development opportunities that would otherwise remain unrealized;
- (f) Development of public recreational facilities and open use lands;
- (g) The construction, improvement and maintenance of public roads and

Resolution No. 2000-407

highways;

- (h) The construction, improvement and maintenance of storm drainage ditches and other storm drainage facilities;
 - (i) The construction of facilities which will directly assist in allowing the expansion of Detroit Metropolitan Wayne County Airport, including without limitation, the construction of Runway 4/22.
2. This Commission hereby declares and determines that the acquisition through condemnation of the property described herein as a public, governmental and municipal function exercised for a public purpose and a matter of public necessity.
 3. That the Wayne County Commission hereby declares and determines that it is necessary to take fee simple to the private property described herein for said public improvement.
 4. The Corporation Counsel or its designated representative, for the County of Wayne is hereby directed and authorized to institute condemnation procedures against the owners and other parties in the interest to take, pursuant to the Applicable Laws, the private property described as follows (see attachment).

[Parcel identifications are attached]

(2000-23-009)

IDENTIFICATION

City of Romulus

Parcel No. 150

Interested Parties: Henry Y. Cooley
Unrecorded Interest: Robert Ward
Property Address: 34452 California, Romulus, MI 48174
Mailing Address: 34452 California, Romulus, MI 48174
Tax Identification: 80-131-01-0085-000
Legal Description: Lots 85 through 90, Eureka Gardens Subdivision, according to the recorded plat thereof, as recorded in Liber 57, Page 100, Wayne County Records.

Parcel No. 152A

Interested Parties: Michigan State Highway Commission
Unrecorded Interest: None
Property Address: None
Mailing Address: Michigan Department of Transportation, Lansing, MI 48909
Tax Identification: 75-020-99-0027-001
Legal Description: Part of the Southeast 1/4 of Section 5, Town 4 South, Range 9 East, beginning South 89 degrees 57 minutes West 241.22 feet and North 0 degrees 06 minutes West 225 feet from Southeast corner of Section 5; thence North 46 degrees 12 minutes 23 seconds West 12 feet; thence North 0 degrees 06 minutes West 25 feet; thence North 89 degrees 57 minutes East 11.47 feet; thence South 0 degrees 06 minutes East 38 feet to the point of beginning.

Parcel No. 152B

Interested Parties: Robert J. Kimball
Unrecorded Interest: State of Michigan
Property Address: None
Mailing Address: Michigan Department of Transportation, Lansing, MI 48909
Tax Identification: 80-131-01-0261-000
Legal Description: Lots 261 through 271, inclusive, Eureka Gardens Subdivision, according to the recorded plat thereof, as recorded in Liber 57 of Plats, Page 100, Wayne County Records.

Parcel No. 155

Interested Parties: Mario F. Monroy
Unrecorded Interest: None
Property Address: California
Mailing Address:
Tax Identification: 80-131-01-0057-300
Legal Description: Lot 57 through 67 inclusive, Eureka Gardens Subdivision, according to the recorded plat thereof, as recorded in Liber 57 of Plats, Page 100, Wayne County Records.

Parcel No. 158

Interested Parties: Mary T. Podlaski, as Trustee of The Mary T. Podlaski Revocable Living Trust, dated July 14, 1992

Unrecorded Interest: None

Property Address: California

Mailing Address: 18000 Hannan Road, New Boston, MI 48164

Tax Identification: 80-131-01-0008-300

Legal Description: Lots 8 through 12, inclusive, Eureka Gardens Subdivision, according to the recorded plat thereof, as recorded in Liber 57 of Plats, Page 100, Wayne County Records.

Parcel No. 171A

Interested Parties: Demco 28, LLC

Unrecorded Interest: None

Property Address: None

Mailing Address: 45501 Helm St., Plymouth, MI 48170

Tax Identification: 80-129-99-0027-000

Legal Description: Part of the Northeast 1/4 of Section 33, Town 3 South, Range 9 East, beginning at East 1/4 corner Section 33; thence South 87 degrees 59 minutes 15 seconds West 1838.58 feet; thence North 24 degrees 35 minutes 40 seconds West 438.55 feet; thence North 86 degrees 35 minutes 20 seconds East 689.89 feet; thence North 1 degree 21 minutes 40 seconds East 243.51 feet; thence North 87 degrees 55 minutes 10 seconds East 1334.60 feet; thence South 1 degree 01 minutes East 666.50 feet to point of beginning. Also that part of Southeast 1/4 of Section 33 beginning at center 1/4 corner of Section 33; thence North 87 degrees 59 minutes 15 seconds East 1289.20 feet; thence South 0 degrees 47 minutes 40 seconds East 517.61 feet; thence South 88 degrees 14 minutes 20 seconds West 321.44 feet; thence Southerly on a curve concave to the West, radius 444.50 feet, arc 28.73 feet; thence South 88 degrees 37 minutes West 965.82 feet; thence North 1 degree 07 minutes 30 seconds West 534.21 feet to the point of beginning.

Parcel No. 172

Interested Parties: Richard Youtsey

Unrecorded Interest: None

Property Address: 16421 S. Wayne Road, Romulus, MI 48174

Mailing Address: 16421 S. Wayne Road, Romulus, MI 48174

Tax Identification: 80-132-99-0003-001

Legal Description: The northerly 177 feet of the southerly 783 feet of east 1/4 of northwest 1/4 of southeast 1/4 of Section 33, Town 3 South, Range 9 East, Wayne County Records.

Parcel No. 173A

Interested Parties: Owen K. Thomason and Brenda S. Thomason

Unrecorded Interest: None

Property Address: 16511 Wayne Road, Romulus, MI 48174

Mailing Address: 9631 Dudley, Taylor, MI 48180

Tax Identification: 80-132-99-0004-002

Legal Description: Part of southeast 1/4 section 33, town 3 south, range 9 east, beginning south

87 degrees 59 minutes 15 seconds west 1319.50 feet and south 0 degrees 47 minutes 40 seconds east 987.71 feet from east 1/4 corner section 33; thence south 0 degrees 47 minutes 40 seconds east 140.01 feet; thence south 88 degrees 14 minutes 20 seconds west 312.16 feet; thence north 01 degrees 34 minutes 40 seconds west 140 feet; thence north 88 degrees 14 minutes 20 seconds east 314.07 feet to point of beginning.

Parcel No. 173B

Interested Parties: Owen K. Thomason and Brenda S. Thomason
Unrecorded Interest: None
Property Address: 16511 Wayne Road, Romulus, MI 48174
Mailing Address: 9431 Dudley, Taylor, MI 48180
Tax Identification: 80-132-99-0004-001
Legal Description:

Part Of southeast 1/4 section 33, town 3 south, range 9 east, beginning south 87 degrees 59 minutes 15 seconds west 1319.50 feet and south 0 degrees 47 minutes 40 seconds east 847.69 feet from east 1/4 corner section 33; thence south degrees 47 minutes 40 seconds east 140.02 feet; thence south 88 degrees 14 minutes 20 seconds west 314.07 feet; thence north 01 degrees 34 minutes 40 seconds west 140 feet; thence north 88 degrees 14 minutes 20 seconds east 315.99 feet to point of beginning.

Parcel No. 173C

Interested Parties: Owen K. Thomason and Brenda S. Thomason
Unrecorded Interest: None
Property Address: 16511 Wayne Road, Romulus, MI 48174
Mailing Address: 9431 Dudley, Taylor, MI 48180
Tax Identification: 80-132-99-0003-002
Legal Description:

The Northerly 153 feet of the Southerly 606 feet of the East 1/4 of the Northwest 1/4 of the Southeast 1/4 of Section 33, town 3 south, range 9 east.

Parcel No. 177

Interested Parties: Frederick A. Greca
Unrecorded Interest: 16851 Wayne Road, Romulus, MI 48174
Property Address: None
Mailing Address: 16851 Wayne Road, Romulus, MI 48174
Tax Identification: 80-132-99-0019-000
Legal Description:

Part of the southeast 1/4 of section 33, town 3 south, range 9 east, City of Romulus, Beginning west 1651.32 feet and north 0 degrees 35 minutes 50 seconds west 545.30 feet from southeast corner of section 33; thence north 0 degrees 35 minutes 50 seconds west 200 feet; thence north 89 degrees 41 minutes 50 seconds east 165 feet; thence south 0 degrees 35 minutes 50 seconds east 200 feet; thence south 89 degrees 41 minutes 50 seconds west 165 feet to point of beginning.

Parcel No. 180

Interested Parties: Edward Hathcock
Unrecorded Interest: None
Property Address: 16620 Vining Road, Romulus, MI 48174
Mailing Address: 16060 Hannan, Romulus, MI 48174

Tax Identification: 80-132-99-0023-700

Legal Description: Part of the southeast 1/4 section 33, town 3 east, range 9 east, beginning north 01 degree 45 minutes 10 seconds west 842.55 feet from southeast corner section 33; thence north 01 degree 45 minutes 10 seconds west 200 feet; thence south 88 degrees 45 minutes 48 seconds west 220 feet; thence south 01 degree 45 minutes 10 seconds east 200 feet; thence north 88 degrees 45 minutes 48 seconds east 200 feet to point of beginning.

Parcel No. 183

Interested Parties: Michelle A. Baldwin

Unrecorded Interest: Rami Fakhovry, 915 Kirts, Troy, MI 48084; wife of James Grizzle, 2141 Hillside Drive, Beaverton, MI 48612.

Property Address: 16295 Vining Road, Romulus, MI 48174

Mailing Address: 15051 Bailey, Taylor, MI 48180

Tax Identification: 80-135-99-0002-000

Legal Description: A part of the southwest 1/4 of section 34, town 3 south, range 9 east, Romulus Township, (now City of Romulus), Wayne County, Michigan described as: Beginning at a point of the west line of section 34, distant due north 1744.34 feet from southwest corner of section 34, and proceeding thence north 215 feet along said west line; thence west 89 degrees 45 minutes 50 seconds east 682.47 feet; thence south 0 degrees 37 minutes 15 seconds west 215 feet; thence 89 degrees 45 minutes 50 seconds west 680.13 feet to the point of beginning, except any part taken or deeded for road purposes.

Parcel No. 186

Interested Parties: David R. York, Trustee, and his successor, of the David R. York Revocable Living Trust Under Agreement dated June 13, 1996

Unrecorded Interest: Aubins Service

Property Address: None

Mailing Address: 28769 Southpointe, Grosse Isle, MI 48138

Tax Identification: 80-135-99-0005-000

Legal Description: That part of the Southwest 1/4 of Section 34, Town 3 South, Range 9 East, described as: Beginning at a point on the West Section Line, distant due North 1,141.78 Feet from the Southwest corner of Section 34, and proceeding; Thence due North, along said line, 191.91 Feet; Thence North 89 Degrees 47 Minutes East, 675.68 Feet; Thence South 0 Degrees 37 Minutes 15 Seconds West, 200.42 Feet; Thence North 89 Degrees 28 Minutes 40 Seconds West, 673.60 Feet to the point of beginning.

Parcel No. 189

Interested Parties: Aubrey L. Gregory and Dulcinea Gregory; Vincent Finazzo

Unrecorded Interest: None

Property Address: None

Mailing Address: 4451 23rd, Wyandotte, MI 48192 (Gregory)
RR #1, Box 396, Henderson, KY 42420 (Finazzo)

Tax Identification: 80-135-99-0010-000

Legal Description: That part of the southwest 1/4 of section 34, town 3 south, range 9 east, described as: Beginning at a point on the west section line distant north 457.28 feet from the southwest corner of section 34, and proceeding; thence north along said west line 195.98 feet; thence south 89 degrees 14 minutes

east 668.29 feet; thence south 0 degrees 37 minutes 15 seconds west 197.74 feet; thence north 89 degrees 04 minutes 57 seconds west 666.16 feet to point of beginning.

Parcel No. 198

Interested Parties: Thomas L. Goff and Norma Goff as to an undivided 1/2 interest and Mark A. Barker, Jr., and Kathleen A. Barker as to an undivided 1/2 interest

Unrecorded Interest: None

Property Address: None

Mailing Address: 9800 McClumpha Road, Plymouth, MI 48170 (Barker)
9411 Robnel Ave., Manassas, VA 22110 (Goff)

Tax Identification: 80-136-99-0002-000

Legal Description: That part of the Southeast 1/4 of Section 34, described as beginning at a point on the South line of said Section distant South 88 degrees 48 minutes 50 seconds East 493.52 feet from the South 1/4 corner of Section 34 and proceeding thence North 0 degrees 37 minutes 15 seconds East 2615.37 feet to the East and West 1/4 line of Section 34; thence South 89 degrees 58 minutes 40 seconds East along said line 166.47 feet; thence south 0 degrees 37 minutes 15 seconds West 2,618.75 feet to the south line of Section 34; thence North 88 degrees 48 minutes 50 seconds West along said South line 166.50 feet to the point of beginning.

Parcel No. 249

Interested Parties: Aaron T. Speck and Donald E. Speck (Parcel 3),
James A. Tillotson (Parcel 1, 2)

Unrecorded Interest: None

Property Address: None

Mailing Address: 401 North Vernon, Dearborn, MI 48128 (Speck)
34900 Prescott, Romulus, MI 48174 (Tillotson)

Tax Identification: 75-014-99-0004-700

Legal Description:

Parcel 1: The south 1/2 of the west 30 acres of the east 1/2 of the northwest 1/4 of Section 4, Town 4 South, Range 9 East, also a parcel of land described as: beginning at a point 237 feet north of the northwest corner of southeast 1/4 of the northwest 1/4 of said Section 4, thence running south along the west line of east 1/2 of the northwest 1/4 of said Section 4, 237 feet to a point, thence east along 1/4 section line 30 rods to a point, thence in a westerly direction along the centerline of the county ditch to the place of beginning, all in Town 4 South, Range 9 East, Township of Huron, Wayne County, Michigan.

Parcel 2: The east 15 acres of the southwest 1/4 of northwest 1/4 of Section 4, Town 4 South, Range 9 East, further described as: commencing 812.23 feet south 87 degrees 08 minutes east from the southwest corner of northwest 1/4 of Section 4, Town 4 South, Range 9 East, thence south 87 degrees 08 minutes east 497.27 feet thence north 2 degrees 42 minutes east 1314.70 feet thence north 87 degrees 18 minutes west 497.27 feet thence south 2 degrees 42 minutes west 1313.25 feet to the point of beginning, being a part of the southwest 1/4 of Northwest 1/4 Section 4, Township of Huron, except a part of the east 15 acres of the southwest 1/4 of the northwest 1/4 of Section 4, Town 4 South, Range 9 East and further described as commencing 977.23 feet south 87 degrees 08 minutes east from the southwest corner of the northwest 1/4 of Section 4, Town 4 South, Range 9 East, thence south 87 degrees 08 minutes east 165.0 feet to a point, thence north 2 degrees 42 minutes east 1314.21 feet to a point on the north line of the southwest 1/4 of the northwest 1/4, Section 4, Town 4 South, Range 9 East, thence north 87 degrees 18 minutes west, 165.0 feet to a point, thence south 2 degrees 42 minutes west 1313.73 feet to the point of beginning.

All being a part of the Southwest 1/4 of the Northwest 1/4, Section 4, Town

4 South, Range 9 East, Township of Huron, Wayne County Michigan.

Parcel 3:

A part of the east 15 acres of the Southwest 1/4 of the Northwest 1/4 of Section 4, Town 4 South, Range 9 East, and further described as commencing 977.23 feet south 87 degrees 08 minutes east from the southwest corner of the northwest 1/4 of Section 4, Town 4 South, Range 9 East, thence south 87 degrees 08 minutes east 165.0 feet to a point, thence north 2 degrees 42 minutes east 1314.21 feet to a point on the north line of the southwest 1/4 of the northwest 1/4 Section 4, Town 4 South, Range 9 East, thence north 87 degrees 18 minutes west 165.0 feet to a point, thence south 2 degrees 42 minutes west 1313.73 feet to the point of beginning. All being a part of the southwest 1/4 of the northwest 1/4, Section 4, Town 4 South, Range 9 East, Huron Township, Wayne County, Michigan.

Parcel No. 258

Interested Parties: Kormos Family Limited Partnership
Unrecorded Interest: None
Property Address: None
Mailing Address: 17280 Vining Road, Romulus, MI 48174
Tax Identification: 75-013-99-0001-000
Legal Description: The Northeast 1/4 of the Northeast 1/4 of Section 4, Township 4 South, Range 9 East, in the Township of Huron, Wayne County Records.

Parcel No. 271

Interested Parties: Henry Kormos
Unrecorded Interest: None
Property Address: 17335 Vining, Romulus, MI 48174
Mailing Address: 17335 Vining, Romulus, MI 48174
Tax Identification: 75-010-01-0016-300
Legal Description: Lots 16, 17 and 18, Penn Vining Subdivision, according to the recorded plat thereof, as recorded in Liber 68 of Plats, Page 100, Wayne County Records.

Parcel No. 276A

Interested Parties: John R. Mitchell
Unrecorded Interest: None
Property Address: 32649 Pennsylvania Road, Huron Township, MI 48164
Mailing Address: 32649 Pennsylvania Road, Huron Township, MI 48164
Tax Identification: 75-010-99-0002-000
Legal Description: The northwest 1/4 of section 3, town 4 south, range 9 east, described as: Beginning at a point, on the north section line distant north 89 degrees 59 minutes 10 seconds west 879.33 feet from the north 1/4 corner of section 3 and proceeding; thence north 89 degrees 59 minutes 10 seconds west along said north line 219.83 feet; thence south 0 degrees 23 minutes 40 seconds east 2118.32 feet; thence south 89 degrees 59 minutes 10 seconds east 219.83 feet; thence north 03 degrees 23 minutes 40 seconds west 2118.32 feet to the point of beginning.

Parcel No. 2768

Interested Parties: John R. Mitchell
Unrecorded Interest: None

Property Address: 32649 Pennsylvania Road, Huron Township, MI 48164
Mailing Address: 32649 Pennsylvania Road, Huron Township, MI 48164
Tax Identification: 75-010-99-0003-000
Legal Description: That part of the Northwest 1/4 of Section 3, Town 4 South, Range 9 East, Huron Township, Wayne County, described as beginning at a point on the north line of Section 3 distant north 89 degrees 59 minutes 10 seconds west 1099.16 feet from the north 1/4 corner of Section 3 and proceeding thence south 0 degrees 23 minutes 40 seconds east 2118.32 feet; thence north 89 degrees 59 minutes 10 seconds west 221.84 feet to a line fence; thence along said line fence north 0 degrees 20 minutes 25 seconds west 2118.32 feet to the north line of Section 3; thence along said line south 89 degrees 59 minutes 10 seconds east 219.84 feet to the point of beginning.

Parcel No. 279

Interested Parties: Frank Mitchell, Jr., Lois Louise Mitchell, John R. Mitchell, Barbara Mitchell
Unrecorded Interest: None
Property Address: 32649 Pennsylvania Road, Huron Township, MI 48164
Mailing Address: 32649 Pennsylvania Road, Huron Township, MI 48164
Tax Identification: 75-010-99-0004-000
Legal Description: Part of the Northwest 1/4 of Section 3, Town 4 South, Range 9 East, described as: Beginning at a point North 0 degree 24 minutes 00 seconds West 400.00 feet from center 1/4 corner of said Section; thence North 89 degrees 57 minutes 50 seconds West 499.72 feet; thence North 0 degree 23 minutes 40 seconds West 240.00 feet; thence North 89 degrees 57 minutes 50 seconds West 160.00 feet; thence North 0 degree 23 minutes 40 seconds West 2,006.91 feet; thence South 89 degrees 9 minutes 10 seconds East 659.50 feet; thence South 0 degree 24 minutes 00 second East 2,247.17 feet to point of beginning.

Parcel No. 313

Interested Parties: Robert C. Wood, Jr. and Sharron L. Wood
Unrecorded Interest: None
Property Address: None
Mailing Address:
Tax Identification: 75-015-99-0003-000
Legal Description: The northwest 1/4 of the southwest 1/4 of section 4, town 4 south, range 9 east, Huron Township, Wayne County, Michigan.

Parcel No 317

Interested Parties: Fred Block and Shannon Block, his wife
Unrecorded Interest: None
Property Address: 34165 Prescott Road, Romulus, MI 48174
Mailing Address: 29160 Eureka Road, Romulus, MI 48174
Tax Identification: 75-016-99-001-702
Legal Description: Part of the southeast 1/4 section 4, town 4 south, range 9 east, described as: Beginning north 89 degrees 54 minutes east 542.35 feet from center 1/4 section 04; thence north 89 degrees 54 minutes east 330.71 feet; thence south 00 degrees 06 minutes east 1316.98 feet; thence south 89 degrees 49 minutes 31 seconds west 330.71 feet; thence north 00 degrees 06 minutes west 1317.41 feet to point of beginning.

Parcel No. 318

Interested Parties: Hilda Block
Unrecorded Interest: None
Property Address: 34165 Prescott Road, Romulus, MI 48174
Mailing Address: 29160 Eureka Road, Romulus, MI 48174
Tax Identification: 75-016-99-0001-701
Legal Description: Part of southeast 1/4 of Section 4, Town 4 South, Range 9 East, described as beginning at center 1/4 corner of Section 4; thence North 89 degrees 54 minutes East 542.35 feet; thence South 00 degrees 06 minutes East 1317.41 feet; thence South 89 degrees 49 minutes West 542.70 feet; thence North 00 degrees 05 minutes 06 seconds West 1318.12 feet to point of beginning.

Parcel No. 319

Interested Parties: Hilda Block
Unrecorded Parties: None
Property Address: 34165 Prescott Road, Romulus, MI 48174
Mailing Address: 29160 Eureka Road, Romulus, MI 48174
Tax Identification: 75-016-99-0001-703
Legal Description: Part of the southeast 1/4 section 4, town 4 south, range 9 east described as: Beginning north 89 degrees 54 minutes east 873.06 feet from center 1/4 corner of section 04; thence north 89 degrees 54 minutes east 444.31 feet; thence south 00 degrees 06 minutes 43 seconds east 1316.40 feet; thence south 89 degrees 49 minutes 31 seconds west 444.58 feet; thence north 00 degrees 06 minutes west 1316.98 feet to point of beginning.

Parcel No. 320

Interested Parties: William T. Fehlig and Jeanne L. Fehlig
Unrecorded Interest: None
Property Address: None
Mailing Address: 3210 Will Carleton Dr., Flat Rock, MI 48134
Tax Identification: 75-011-99-0001-702
Legal Description: Part of the southwest 1/4 section 3, town 4 south range 9 east, described as: Beginning at west 1/4 corner of section 3; thence south 89 degrees 42 minutes 30 seconds east 278.07 feet; thence south 00 degrees 00 minutes 08 seconds east 311 feet; thence south 89 degrees 42 minutes 30 seconds east 140.53 feet; thence south 00 degrees 00 minutes 08 seconds east 208 feet; thence north 89 degrees 42 minutes 30 seconds west 418.63 feet; thence due north 519 feet to point of beginning.

Parcel No. 337

Interested Parties: John J. Perry and Christine Perry
Unrecorded Interest: None
Property Address: 34400 Sibley Road, New Boston, MI 48164
Mailing Address: 22335 Nixon, Brownstown Township, MI 48192
Tax Identification: 75-015-99-0016-704
Legal Description: That part of the southeast 1/4 of the southwest 1/4 of section 4, town 4 south, range 9 east, Huron Township, Wayne County, Michigan, described as:

Beginning at the south 1/4 corner of section 4 and proceeding; thence along the south line of said section 4, due west 164.82 feet; thence north 00 degrees 02 minutes 27 seconds east, 1316.15 feet; thence south 89 degrees 56 minutes 18 seconds east, 164.82 feet to the north and south 1/4 line of said section 4; thence south 00 degrees 02 minutes 27 seconds west along said north and south 1/4 line, 1315.97 feet to the point of beginning.

Parcel No. 341

Interested Parties: Robert E. Boulds and Catherine A. Boulds
Unrecorded Interest: None
Property Address: 34120 Sibley Road, New Boston, MI 48164
Mailing Address: 34120 Sibley Road, New Boston, MI 48164
Tax Identification: 75-016-99-0003-000
Legal Description: That part of the southeast 1/4 of section 4, town 4 south, range 9 east, described as: Beginning at a point on the south line of said section distant south 89 degrees 58 minutes east 655.86 feet from the south 1/4 corner of section 4 and proceeding; thence south 89 degrees 58 minutes east along said south line 327.93 feet; thence north 03 degrees 23 minutes 48 seconds east 1311.41 feet; thence north 89 degrees 44 minutes 23 seconds west 330.95 feet; thence south 0 degrees 15 minutes 52 seconds west 1313.37 feet to the point of beginning.

Parcel 342

Interested Parties: Dell R. Morgan
Unrecorded Interest: None
Property Address: 33910 Sibley Road, Huron Township, MI 48174
Mailing Address: 11732 Syracuse, Taylor, MI 48180
Tax Identification: 75-016-99-0006-000
Legal Description: The South 264.0 feet of the East 165.0 feet of the Southwest 1/4 of the Southwest 1/4 of Section 4, Town 4 South, Range 9 east.

Parcel No. 358

Interested Parties: Mary A. Wilson and Jeffrey Wilson
Unrecorded Interest: None
Property Address: 18090 Wahrman, Huron, MI 48164
Mailing Address: 18090 Wahrman, Huron, MI 48164
Tax Identification: 75-020-99-0006-000
Legal Description: Part of the northeast 1/4 of the southeast 1/4 of Section 5, Town 4 South, Range 9 East, described as: beginning at a point on the east line of said Section distant south 190.42 feet from the east 1/4 corner of Section 5 and proceeding thence south along said east line 188.04 feet; thence west 1308.15 feet; thence north 188.04 feet; thence east 1308.37 feet to the point of beginning except west 1.30 acre thereof.

Parcel No. 360

Interested Parties: Jeffrey J. Komisar
Unrecorded Interest: None
Property Address: 18490 Wahrman, Huron, MI 48164
Mailing Address: 18490 Wahrman, Huron, MI 48164

Tax Identification: 75-020-99-0010-000

Legal Description: A parcel described as beginning at a point distant south 696.44 feet from the northeast corner of the northeast 1/4 of southeast 1/4 of section 5, town 4 south, range 9 east, Huron Township, Wayne County Michigan; thence along the east line of section 5, south 59.2 feet; thence south 89 degrees 46 minutes west 996.20 feet; thence north 71 degrees 25 minutes 09 seconds east 344.05 feet; thence north 80 degrees 17 minutes 30 seconds east 184.0 feet; thence south 81 degrees 00 minutes east 494.8 feet to the place of beginning, except the south 1 foot thereof.

Parcel No. 362

Interested Parties: Jeffrey J. Komisar

Unrecorded Interest: None

Property Address: 18490 Wahrman, Huron, MI 48164

Mailing Address: 18490 Wahrman, Huron, MI 48164

Tax Identification: 75-020-99-0013-001

Legal Description: Part of the northeast 1/4 of the southeast 1/4 of section 5, town 4 south, range 9 east, Huron Township, Wayne County, Michigan described as: Beginning at a point on the east line of said section 5, distant due south 942.78 feet from the east 1/4 corner of section 5, town 4 south, range 9 east; thence due south 120.0 feet along the east line of said section 5; thence north 89 degrees 51 minutes 29 seconds west 988.11 feet; thence north 1 degree 56 minutes 52 seconds west 120.08 feet along the east line of the I-275 Expressway; thence south 89 degrees 51 minutes 29 seconds east 992.20 feet to the point of beginning.

Parcel No. 363

Interested Parties: Jeffrey J. Komisar

Unrecorded Interest: None

Property Address: 18490 Wahrman, Huron, MI 48164

Mailing Address: 18490 Wahrman, Huron, MI 48164

Tax Identification: 75-020-99-0013-002

Legal Description: Part of the northeast 1/4 of the southeast 1/4 of section 5, town 4 south, range 9 east, Huron Township, Wayne County, Michigan, described as: Beginning at a point on the east line of said section 5, distant due south 1062.78 feet from the east 1/4 corner of section 5, town 4 south, range 9 east; thence due south 120.00 feet along the east line of said section 5; thence south 89 degrees 51 minutes 18 seconds west, 975.68 feet to a point on the east line of the I-275 Expressway; thence north 13 degrees 53 minutes 08 seconds west, 39.55 feet to an angle point monument on the said east line of I-275 as monumented by the Michigan State Highway Department; thence north 1 degree 56 minutes 52 seconds west, 86.57 feet along the east line of I-275; thence south 89 degrees 51 minutes 29 seconds east, 988.11 feet to the point of beginning.

Parcel No. 364

Interested Parties: Jeffrey J. Komisar

Unrecorded Interest: None

Property Address: 18490 Wahrman, Huron, MI 48164

Mailing Address: 18490 Wahrman, Huron, MI 48164

Tax Identification: 75-020-99-0013-003

Legal Description: Part of the northeast 1/4 of the southeast 1/4 of section 5, town 4 south, range 9 east, Huron Township, Wayne County, Michigan, described as: Beginning at a point on the east line of said section 5, distant due south 1182.78 feet from the east 1/4 corner of section 5, town 4 south, range 9 east; thence due south 136.37 feet along the east line of said section 5; thence south 89 degrees 51 minutes 18 seconds west, 941.99 feet to a point on the east right-of-way line of the I-275 Expressway, said point being south 13 degrees 53 minutes 08 seconds east, 179.94 feet from an angle point monument on the said east line of I-275, as monumented by the Michigan State Highway Department; thence north 13 degrees 53 minutes 08 seconds west, 140.39 feet along said east line of I-275; thence north 89 degrees 51 minutes 18 seconds east, 975.68 feet to the point of beginning.

Parcel No. 365A

Interested Parties: Stephanie Komisar
Unrecorded Interest: None
Property Address: 18510 Wahrman, Huron, MI 48164
Mailing Address: 18510 Wahrman, Huron, MI 48164
Tax Identification: 75-020-99-0018-000
Legal Description: Part of the southeast 1/4 of Section 5, Town 4 South, Range 9 East, described as beginning at a point on the east section line distant due north 1319 feet and south 89 degrees 57 minutes west 233 feet from the southeast corner of Section 5 and proceeding thence south 89 degrees 57 minutes west 706.42 feet; thence south 15 degrees 01 minutes 32 seconds east 139.22 feet; thence south 38 degrees 8 minutes 50 seconds east 319.16 feet; thence south 52 degrees 12 minutes 26 seconds east 2.46 feet; thence north 75 degrees 33 minutes east 479.96 feet; thence due north 274.50 feet to the point of beginning.

Parcel No. 365B

Interested Parties: Michigan State Highway Commission
Unrecorded Interest: None
Property Address: None
Mailing Address: Michigan Department of Transportation, Lansing, MI 48909
Tax Identification: 75-020-99-0020-001
Legal Description: Northeast triangular part measuring 200.95 feet on north line and 210 feet on east line of that part of southeast 1/4 of Section 5, Town 4 South, Range 9 East; beginning south 89 degrees 57 minutes west 501.22 feet from southeast corner of Section 5 thence south 89 degrees 57 minutes west 477.86 feet; thence north 0 degrees 06 minutes west 852 feet; thence north 75 degrees 31 minutes east 493.55 feet; thence south 0 degrees 06 minutes east 975.49 feet to point of beginning.

Parcel No. 372

Interested Parties: George Odish and Hanni Odish; Khayoon Hannawa and Cindy Hannawa; Sam A. Beydour
Unrecorded Interest: None
Property Address: None
Mailing Address: 39341 Fulton Ct., Farmington Hills, MI 48331 (Odish, Hannawa)
26325 Timber Trail, Dearborn Heights, MI 48127 (Beydour)
Tax Identification: 75-020-99-0028-000
Legal Description: Part of the southeast 1/4 of Section 5, Town 4 South, Range 9 East described as beginning at the southeast corner of Section 5 and proceeding then south

89 degrees 57 minutes west along the south line of said section 241.22 feet; thence north 0 degrees 06 minutes west 250 feet; thence north 89 degrees 57 minutes east 241.66 feet to the east line of Section 5; thence due south along said east line 250 feet to the point of beginning except southeasterly 0.64 acre thereof deeded to Michigan State Highway Dept. in Liber 16748, Page 62, Wayne County Records.

Parcel No. 402

Interested Parties: Donald J. Staffeld and Ann M. Staffeld
Unrecorded Interest: None
Property Address: 33125 Prescott, Huron, MI 48164
Mailing Address: 33125 Prescott, Huron, MI 48164
Tax Identification: 75-011-99-0002-000
Legal Description: Part of Section 3, town 4 south, range 9 east, Huron Township, Wayne County, Michigan, described as: Beginning South 89 degrees 42 minutes 30 seconds East 418.60 feet from the West 1/4 corner of Section 3, town 4 south, range 9 east, thence South 89 degrees 42 minutes 30 seconds East 179.95 feet; thence South 0 degrees 00 minutes 08 seconds East 726.07 feet; thence North 89 degrees 46 minutes 05 seconds West 179.95 feet; thence North 0 degrees 00 minutes 08 seconds West 726.35 feet to the point of beginning.

Parcel No. 418

Interested Parties: Alton Neely; Charter Township of Huron
Unrecorded Interest: None
Property Address: None
Mailing Address: Huron Charter Township, 37290 Huron Drive, New Boston, MI 48165-0218
Tax Identification: 75-017-99-0005-002
Legal Description: That part of the South 1/2 of the Southeast 1/4 of the Northeast 1/4 of Section 5, Town 4 South, Range 9 East, Huron Township, Wayne County, Michigan, described as follows: Commencing 329.83 feet, North 02 degrees 05 minutes 57 seconds West from the East 1/4 corner of Section 5; thence South 87 degrees 41 minutes 11 seconds West 827.63 feet; thence North 01 degrees 26 minutes 51 seconds West 164.94 feet; thence North 87 degrees 41 minutes 11 seconds East 825.75 feet; thence South 02 degrees 05 minutes 57 seconds East 164.92 feet to the point of beginning.

Parcel No. 423

Interested Parties: Felix A. Reyes and Magalis Reyes
Unrecorded Interest: None
Property Address: 33120 Prescott Road, Huron, MI 48174
Mailing Address: 33120 Prescott Road, Huron, MI 48174
Tax Identification: 75-010-01-0038-000
Legal Description: Lots 38 and 39, Penn Vining Subdivision, according to the recorded plat thereof, as recorded in Liber 68 of Plats, Page 100, Wayne County Records.

Parcel No. 425

Interested Parties: K.M.R. Building, Inc.; State of Michigan; U.S. Internal Revenue Service
Unrecorded Interest: None
Property Address: None

Mailing Address: 13674 Castle Street, Southgate, MI 48195 (K.M.R)
P.V. McNamara Federal Bldg., 477 Michigan Ave., Detroit MI 48226-2597 (I.R.S)
Michigan Department of Treasury, P.O. Box 30158, Lansing, MI 48909 (State of Michigan)

Tax Identification: 75-010-99-0013-003

Legal Description: Part of the northwest 1/4 of section 3, town 4 south, range 9 east, beginning south 89 degrees 39 minutes 30 seconds east 804.40 feet from west 1/4 corner section 3; thence north 0 degrees 00 minutes 33 seconds east 1144.00 feet; thence south 89 degrees 39 minutes 30 seconds east 143.00 feet; thence south 0 degrees 00 minutes 33 seconds west 1144.00 feet; thence north 89 degrees 39 minutes 30 seconds west 143.00 feet to the point of beginning.

Parcel No. 427

Interested Parties: The Fellowship Missionary Baptist Church

Unrecorded Interest: None

Property Address: 32894 Prescott Road, Romulus, MI 48174

Mailing Address: 32894 Prescott Road, Romulus, MI 48174

Tax Identification: 75-010-99-0012-000

Legal Description: Commencing in the center of the highway at the Southeast corner of the East of the West of the Northwest 1/4 of Section 3, Town 4 South, Range 9 East; thence West along the center of the highway 13 1/3 rods; thence North 18 rods to a point; thence East 13 1/3 rods to the East line of said described lands; thence South 18 rods to the place of beginning, excepting any part of the above described land taken, used or deeded for street, road or highway purpose.

Parcel No. 2555

Interested Parties: Fred A. Block and Shannon Murray-Block;
James A. Block and Paula D. Block; as Tenants in Common

Property Address: None

Mailing Address: 29160 Eureka Road, Romulus, MI 48174;
34165 Prescott Road, Romulus, MI 48174

Tax Identification: 75-014-99-0011-000

Legal Description: The southwest 1/4 of the northwest 1/4 of Section 4 except the east 15.0 acres thereof, Wayne County Records.

Parcel No. 2665

Interested Parties: Michigan State Highway Commission

Unrecorded Interest: None

Property Address: None

Mailing Address: Michigan Department of Transportation, Lansing, MI 48909

Tax Identification: 75-017-99-0006-001

Legal Description: East 200 feet of west 7.60 acres of south 1/2 of southeast 1/4 of northeast 1/4 of Section 5, Town 4 South, range 9 East, Wayne County Records

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

COUNTY OF WAYNE, a Charter County,

Plaintiff,

v-

Hon. Michael F. Sapala

JEFFREY J. KOMISAR, et al.,

Defendants.

Case No. 01-113583-CC
01-113584-CC
01-113587-CC
01-114113-CC
01-114115-CC
01-114116-CC
01-114118-CC
01-114122-CC
01-114123-CC
01-114124-CC
01-114127-CC
01-114120-CC
01-114121-CC

OPINION

1. Introduction and Facts.

These condemnation cases instituted by the County of Wayne are presently before the court on defendants' motion for summary disposition with respect to the issue of public necessity. The defendants pose three potentially dispositive questions in their motion: whether there is statutory authority for the County's maintenance of these proceedings; whether it is necessary to obtain the land that the County seeks to acquire; and whether the acquisition of the defendants' property serves a public purpose. For the reasons stated below, the court finds that an affirmative answer must be given to each of

these questions. It follows that the defendants' motion for summary disposition will be denied.

In these consolidated proceedings, commenced under the auspices of the Uniform Condemnation Procedures Act (the UCPA), MCL 213.51, *et seq.*, the County sought the acquisition of some twelve hundred acres of land located adjacent to or near the southern boundaries of the Detroit Metropolitan Airport. At the time that the defendants filed this motion, however, the County represents that it has secured title to approximately 90% of the acreage originally sought to be acquired in these actions.

The land is sought to be used to develop what the County refers to as the Pinnacle Aeropark, which the Complaint describes as "a mixed-use business park, with the focus being the development of light manufacturing and research and development facilities as well as hotel, recreational facilities and open use land." Complaint, ¶ 4. The Resolution of Necessity adopted by the County Commission in support of the commencement of these cases states that the public purposes for the acquisition of the properties are four-fold:

(i) creation of jobs for its citizens; (ii) the stimulation of private investment and redevelopment in the County to insure a healthy and growing tax base so that the County can fund and deliver critical public services, (iii) stemming the tide of disinvestment and population loss; and (iv) supporting development opportunities that would otherwise remain unrealized.

The Resolution of Necessity also indicates that these condemnation actions have been instituted for the following additional purposes: development of recreational facilities and open use lands; construction, improvement and maintenance of public roads

and highways; construction, improvement and maintenance of storm drainage ditches and other storm discharge facilities; and possible airport expansion, including the construction of a new runway.

Following the commencement of these proceedings, defendants filed motions to review necessity. In those motions, defendants asserted that there had been no showing of public necessity for the acquisition of the land and that the County had abused its discretion in its determination of public necessity. To resolve the questions of public necessity, defendants, after conducting limited discovery, ultimately filed the present motion. The court also heard testimony from witnesses called on behalf of the County.¹ Finally, the parties have fully briefed the issues, and have had an additional opportunity to develop their arguments through extensive oral argument.

2. MCL 213.23 Provides Statutory Authority for the
County's Maintenance of These Proceedings.

Preliminary to discussing issues concerned with public necessity is the question of whether there is any statutory authority for the County to maintain these proceedings. The issue arises since, as noted in City of Lansing v Edward Rose Realty, Inc., 442 Mich 626, 632 (1993), "Because a municipality has no inherent power to condemn property even for public benefit or use, the power of eminent domain must be specifically conferred upon the municipality by statute or the constitution, or by necessary implication from delegated authority."

1

It is presently unnecessary to summarize the witnesses' testimony. Instead, the court will refer to their testimony where necessary in the course of the court's discussion of the merits of the parties' arguments.

In our case, the County cites no constitutional provision. Instead, its power to condemn the parcels involved in this case is said to be founded on the provisions of MCL 213.23 which provides, in pertinent part.

Any public corporation ... is authorized to take private property necessary for a public improvement or for the purposes of its incorporation or for public purposes within the scope of its power for the use or benefit of the public and to institute and prosecute proceedings for that purpose.

Further, a public corporation or state agency may commence condemnation proceedings when it has: "declared ... public purposes within the scope of its powers make it necessary, and ... that it deems it necessary to take private property for such ... public purposes within the scope of its powers, designating the same, and that the improvement is for the use or benefit of the public." MCL 213.24. For purposes of MCL 213.23 and MCL 213.24, public corporations include, *inter alia*, "all counties." MCL 213.21.

In construing the reach of this statute, this court is mindful of the usual rules of statutory interpretation:

The paramount rule of statutory interpretation is that we are to effect the intent of the Legislature ... To do so, we begin with the statute's language. If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written ... In reviewing the statute's language, every word should be given meaning, and we should avoid a construction that would render any part of the statute surplusage or nugatory.

Wickens v Oakwood Healthcare System, 465 Mich 53, 60 (2001).

On the issue of the appropriate standards of statutory construction that the court must use in interpreting the statute, it is true some cases, as noted by the

defendants, indicate that courts will strictly construe condemnation statutes in favor of the dispossessed landowner. Chesapeake & O Ry Co v Herzberg, 15 Mich App 271, 274 (1968). Yet the rule of strict construction only comes into play when, after applying the ordinary rules of statutory construction, the court finds an ambiguity. American Legion Memorial Home Ass'n of Grand Rapids v City of Grand Rapids, 118 Mich App 700, 708 (1982). As noted in Consumers Power Co v Allegan State Bank, 20 Mich App 720, 741 (1969), "[S]tatutes, including condemnation statutes, must be construed in such a manner as to effectuate their purpose not defeat the legislative intent." Also see, 26 CJS Eminent Domain, § 21, p 467. With the foregoing in mind, the court reviews the arguments of the parties relative to the application of MCL 213.23.

In reviewing MCL 213.23, the court notes it gives the power of eminent domain to public corporations, such as the County, in three situations where private property is sought to be taken which is necessary,

1. for a public improvement;
2. for the purposes of its incorporation;
3. for public purposes within the scope of its power for the use or benefit of the public.

The County makes no argument that the second situation applies to our case, and thus the court focuses on the first or third provisos.

Although not clearly designated in its brief, at oral argument the County contended that the first proviso authorized the condemnation actions relative to the Pinnacle Project. Tr. 11-16-01, 29.

The term "public improvement" is not defined in the statute. Yet the court is aware that another statute, the Revenue Bond Act, MCL 141.101, *et seq.*, does provide a definition for that phrase. The Revenue Bond Act, in general, authorizes public corporations² to "purchase, acquire, construct, improve, enlarge, extend or repair 1 or more public improvements ..." MCL 141.104, and provides for the financing of public improvements through the issuance of bonds, MCL 141.107. The Revenue Bond Act comprehensively defines what constitutes a public improvement. MCL 141.103(b).³

2

The Revenue Bond Act, MCL 141.103(a) defines "public corporation" to include a county.

3

MCL 141.103(b) states in pertinent part:

"Public improvements" means only the following improvements: housing facilities; garbage disposal plants; rubbish disposal plants; incinerators; transportation systems, including plants, works, instrumentalities, and properties used or useful in connection with those systems; sewage disposal systems, including sanitary sewers, combined sanitary and storm sewers, plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, or disposal of sewage or industrial wastes; storm water systems, including storm sewers, plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, or disposal of storm water; water supply systems, including plants, works, instrumentalities, and properties used or useful in connection with obtaining a water supply, the treatment of water, or the distribution of water; utility systems for supplying light, heat, or power, including plants, works, instrumentalities, and properties used or useful in connection with those systems; approved cable television systems, approved cable communication systems, or telephone systems, including plants, works, instrumentalities, and properties used or useful in connection with those systems; automobile parking facilities, including within or as part of the facilities areas or buildings that may be rented or leased to private enterprises serving the public; yacht basins; harbors; docks; wharves; terminal facilities; elevated highways; bridges over, tunnels under, and ferries across bodies of water;

(continued...)

Statutes that address the same subject are *in pari materia* and must be read together as one law, even where, as here, the statutes do not reference each other and were enacted at different times. State Treasurer v Schuster, 456 Mich 408, 417 (1998). In applying this rule of construction, courts apply the definitions of one enactment to define the words used in another statute. See for example, Witt v Seabrook, 210 Mich App 299, 302 (1995) (definition of "support" found in the Paternity Act used to define what is included in support payments under the Family Support Act).

In our case, the provisions of MCL 213.23 and the Revenue Bond Act address, at least in part, a common subject, namely the acquisition of public improvements. The court, therefore, finds that these two enactments are *in pari materia* with the result that the definition of "public improvements" found in the Revenue Bond Act should be used to define that phrase as used in MCL 213.23.

In reviewing the various items contained in MCL 141.103(b)'s definition of "public improvements," the court notes that at least some of the purposes set forth in the Resolution do fall within the scope of MCL 141.103(b)'s definition. For example, the statutory definition of "public improvements" includes such items as, "storm water systems"

³(...continued)

community buildings; public wholesale markets for farm and food products; stadiums; convention halls; auditoriums; dormitories; hospitals and other health care facilities; buildings devoted to public use; museums; parks; recreational facilities; reforestation projects; aeronautical facilities; and marine railways; or any right or interest in or equipment for these improvements. The term "public improvement" means the whole or a part of any of these improvements or of any combination of these improvements or any interest or participation in these improvements, as determined by the governing body ...

and "aeronautical facilities." In our case, the Resolution specifically mentions that the County intends to construct, at least on part of the land, items that relate to "storm water systems" and "aeronautical facilities." However, the County does not maintain that all of the land is necessary for these purposes. Instead, the Resolution, as well as the proofs before the court, also indicate that a substantial part of the land will be eventually turned over to private parties for purposes of developing a "mixed use business park, with the focus being the development of light manufacturing and research and development facilities ..." These items are not included in the definition of what constitutes "public facilities." Hence, the court finds that invocation of the first proviso contained in MCL 213.23 would not provide complete statutory authorization for these cases. Thus, whether this statute provides sufficient authorization for these cases is dependent on whether the cases fall within the last proviso of MCL 213.23, that which allows condemnation proceedings to be instated "for public purposes within the scope of its power for the use or benefit of the public."

In arguing that this last proviso does not provide authorization for these cases, defendants focus on the phrase "within the scope of its power," to argue that the County must point to some other statute that specifically empowers the County to commence condemnation proceedings for the purpose of acquiring land that ultimately will be conveyed to private parties. Thus, under the defendants' reading of the statute, the phrase "within the scope of its power" refers to a municipal corporation's power to condemn. The County, however, maintains that the phrase "within the scope of its power" merely refers to any of the powers that the County might otherwise wield.

In construing the scope of this portion of MCL 213.23, it should be recalled that the opening phrase of the statute contains words of authorization, i.e., a public corporation is "authorized to take private property" Moreover, the phrase "within the scope of its power" is not further restricted. Because the Legislature has not further delineated that the "power" referred to in this portion of the statute only relates to the power to condemn, adoption of defendants' argument would require this court to add language not presently found in the statute, and, in effect, impermissibly rewrite the statute. See for example, Omelenchuk v City of Warren, 461 Mich 567, 575 (2000). For this reason, the court cannot accept the argument advanced at oral argument by one of the defendants that this portion of the statute is limited to so-called traditional exercises of eminent domain. Tr., 11-14-01, p 78-80. There is no restriction in this portion of the statute. Additionally, defendants' construction of the statute results in a seeming redundancy. It would be unnecessary for the Legislature to declare generally that counties have the power to condemn in situations where, under separate enactments, the Legislature has already granted municipal corporations the power to condemn. Finally, defendants' argument ignores that Michigan case law has traditionally regarded MCL 213.23 and its predecessors as a general grant of authority which could be used by a municipality as an independent basis for instituting condemnation proceedings, notwithstanding that another statute might have also authorized the taking. See, In re Opening of Gallagher Ave, 300 Mich 309 (1942).

Accordingly, the court agrees with the County that the phrase "within the scope of its powers" refers to the general powers of a public corporation and, hence, if the

public corporation is otherwise empowered to perform a certain function, MCL 213.23 provides general authority for the municipal corporation to take private property to implement that function, assuming, as required by the other language of this statute, that the taking is otherwise necessary for a public purpose, and is for the use or benefit of the public as additionally required by this portion of the statute.

Defendants, as against this result, argue that cases in which courts have sustained the authority of a municipality to condemn lands, that the municipality had planned to convey to private parties, only occur where the condemning authority had a separate basis for the taking, which expressly authorized the municipality to take private property and ultimately convey the property to a third party. See, Poletown Neighborhood Council v City of Detroit, 410 Mich 616 (1981) and City of Detroit v Lucas, 180 Mich App 47 (1989).

In both the Poletown and Lucas cases, the condemning authority sought to take land that would be turned over to a private party. In both cases, separate enactments (in Poletown, the Economic Development Corporation Act, MCL 125.1601, et seq.; in Lucas, the Downtown Development Authority Act, MCL 125.1651, et seq.) authorized the condemning authority to convey the property to an economic development corporation or downtown development authority, MCL 125.1622 ;MCL 125.1660. These governmental entities were expressly authorized to convey the property to third persons. MCL 125.1607(h); MCL 125.1657(h). In both cases, the courts found that the plaintiff had sufficient statutory authority to maintain the actions.

In reviewing these two cases, it should be noted that in neither case was MCL 213.23 discussed in the decision of the Supreme Court or the Court of Appeals. Instead, separate statutory authority was found to authorize not only the taking aspect of the case, but also that aspect pertaining to the ultimate transfer of the property taken to a third party. The court is not persuaded that the absence of the mention of MCL 213.23 in these opinions is dispositive of the question presently before the court. It is entirely speculative to draw any firm lesson from the absence of a discussion of MCL 213.23 with respect to how these decisions would have construed MCL 213.23. Indeed, defendants do not point to specific language in these cases that would tend to confirm their argument that when a public corporation condemns land and it is contemplated that it will ultimately convey the land to a some third party, that it must have specific authorization. Indeed, if anything, from the text of Lucas, one could equally posit that the Court did not regard specific authorization necessary, but instead regarded the question as devolving on the circumstances under which the constitutional mandate that property be condemned only for a "public purpose" was satisfied. Id., 51.

In contrast to these cases, the County argues that the discussion of the question of authorization found in Edward Rose, supra, serves to justify its reliance on MCL 213.23 as the source of its authority. The defendants counter by noting that the condemning authority flowed from an ordinance, and that in our case, the County has not enacted an ordinance that would confer on it the power to condemn private property for the purpose of ultimately turning over the property to a private person.

In Edward Rose, the Court reviewed an ordinance providing for mandatory access to private property by the grantee of a city franchise for provision of cable television services, and permitted the city to commence condemnation proceedings in the event of a refusal by the private property owner to allow cable access. The Court held that the ordinance was unreasonable and hence, beyond the authority of a city to exercise the power of eminent domain. Id., 628. It is important to note that the basis of the Court's holding was not that the city lacked specific legislatively conferred power to institute the condemnation proceedings. Instead, the dispositive analysis focused on whether the taking was primarily for a private or public benefit. Hence, the Court's penultimate conclusion: "We are persuaded that this benefit to ... [the cable company] predominates over the asserted public benefits. The ordinance and resolutions are therefore invalid as unreasonable because the public would not be the primary beneficiary. Hence the proposed conduct is beyond the city's authority to exercise the power of eminent domain." Id., 644.

As observed by the County, in Edward Rose, the city relied on two general statutes, MCL 213.23 and a provision of the Home Rule Cities Act, MCL 117.4e(2), the provisions of which virtually mirror those of MCL 213.23. Neither of these statutes facially authorized the specific taking attempted by the city. The effect of this situation was summarized by the Court as follows,

The city is authorized to condemn private property for any public use within the scope of its powers. The cited enabling statutes, however, do not specifically authorize the takings in the present case. There is no state statute identifying as a public use or purpose the mandatory access onto private

property by a city-franchised cable television provider. Ordinances passed under such general authority are open to inquiry by the courts and, in order to be held valid, must be reasonable and not oppressive.

Id., 632-633.

The Court then declared, "We are therefore required to determine whether ... [the ordinance] is reasonable and serves a public purpose." Id., 633. In examining whether the ordinance was reasonable, the Court further opined, "Because the city passed Ordinance 753 without an express delegation of authority by the state, we may review the city's asserted public purpose. Judicial deference granted state legislative determinations of public use is not similarly employed when reviewing determinations of public purpose made by a municipality pursuant to broad, general enabling statutes." Id., 637. In other words, a general authorization provided to municipal corporations in MCL 213.23, without any other expression of a legislative finding of public interest, would open the door to plenary judicial examination of whether the condemnation action did, in fact, further a public purpose. See for example, id., 642 ("Mere statements that a proposed action furthers a public benefit are not conclusive").

Our case, at least structurally, has similarities to the Edward Rose case. As did the condemning agency in the Edward Rose case, the County is relying on a general grant of power to condemn property found in MCL 213.23. Yet, there is no statute that declares that taking private property for purposes of developing an "aeropark," or as "a mixed-use business park" to be a public purpose. Hence, as in Edward Rose, there is no specific grant of legislative authority that authorizes the specific type of takings in our case.

Yet, Edward Rose did not invalidate the action of the city on this basis. Instead, the consequence of this was to open the door to judicial review of the substance behind the general declarations of public purpose cited in the ordinance and in the Resolution of Necessity. Thus, under Edward Rose, the County may proceed under the general grant of authority contained in MCL 213.23, but the court is not bound by conclusions of public purpose that may be found in the Resolution of Necessity.

The defendants objected to this reading of Edward Rose by noting that in Edward Rose the city was purportedly acting under an ordinance. They note that in our case the County has not enacted an enabling ordinance, but instead relies on the Resolution of Necessity.

Assuming for purposes of defendants' argument that the ordinance in Edward Rose potentially provided sufficient authority to the city, the fact that in our case the County acted by way of resolution instead of through the enactment of an ordinance is of little moment. While courts continue to recognize the abstract difference between ordinances and resolutions, see for example, McCurrie v Town of Kearny, 344 NJ Super 470, 479; 782 A2d 919 (2001), nonetheless, as noted in Gale v Board of Sup'rs of Oakland County, 260 Mich 399, 404 (1932), "Nor is there any merit to the claim that the board cannot do by resolution what they might do by ordinance. Unless the Legislature specifies that a certain act must be done by ordinance or in some other specified manner, it is just as valid when accomplished by resolution as by ordinance." Since no state statute requires the County to enact an enabling ordinance in this situation, its passage of the Resolution of Necessity would be sufficient authorization.

To conclude this portion of this Opinion, this court finds that the language of MCL 213.23, which confers on municipal corporations, such as the County, the authority to take private property necessary "for public purposes within the scope of its power for the use or benefit of the public," confers sufficient authority for the County to commence condemnation proceedings even if it is contemplated and expected that the proceedings will result in the subject property being conveyed to private parties, so long as the taking can otherwise be justified as being necessary for a public purpose and for the use or benefit of the public. Specifically, the court notes that no one argues that the County could not otherwise acquire the at-issue property and then convey it to a private party. See generally, MCL 46.11(c) (providing for the sale of county property). Therefore, the County is potentially acting within the scope of its powers, and the resolution of the propriety of the instant proceedings must be determined by reviewing whether the elements of necessity and public purpose/public use or benefit also exist.

3. Necessity.

Defendants also challenge the necessity of the acquisition of their lands. They posit that the County does not have definite plans or buyers for all of the property, and indeed, still must fulfill regulatory requirements before it can proceed with its plans. Indeed, argue the defendants, it is entirely speculative whether the County will, in fact, ever come to use the defendants' property. Thus, the County is impermissibly stockpiling land for some indeterminate use, and there can be no showing of necessity. Reliance is especially placed on Grand Rapids Bd of Education v Baczewski, 340 Mich 265, 272 (1954) and City of Troy v Bamard, 183 Mich App 565 (1990).

The County contends that the evidence before the court reflects that no abuse of discretion has been demonstrated with respect to the element of necessity. In particular, the County contends that the evidence shows that it does have definite plans for the use of the property; that the regulatory hurdles spoken of by the defendants are all but resolved; and that there is every indication that there is a high demand for the proposed use of the property, and thus this case does not amount to a taking based on speculative need.

To resolve these contentions, the court notes that MCL 213.56 provides for review of the necessity for the acquisition of all or part of the property. Under MCL 213.56(2), when the acquisition is by a public agency, "the determination of public necessity by that agency is binding on the court in the absence of a showing of fraud, error of law, or abuse of discretion." In City of Troy v Barnard, supra, 569-570, the Court noted with respect to the necessity issue:

Plaintiff's determination of public necessity is binding on the courts and will not be disturbed absent "a showing of fraud, error of law, or abuse of discretion." MCL 213.56(2) Plaintiff's resolution of necessity is prima facie evidence of necessity and fulfills its initial burden of proof. Defendants, as the moving parties in asking for a review of the finding of necessity, have the burden of coming forward with evidence to support their claim of abuse of discretion. ... However, the court may review the necessity of acquiring some or all of the property involved ...

Generally, in reviewing a condemning agency's decision for abuse of discretion, this Court considers whether the decision is violative of fact and logic. The flexibility of condemnation review standards recognizes that deference must be paid to the agency's statutory authority and the uniqueness of each factual situation ...

In reviewing whether a taking is necessary, the consideration is not the advantage to the public, but whether the project needs the property involved ...

Bearing in mind the limited standard of review with respect to resolving the necessity issue,⁴ the court finds that the proofs adduced during the hearing on this motion do not show that the County abused its discretion in finding necessity. These proofs demonstrated that the County indeed is acting pursuant to a plan, the broad outlines of which are largely settled. As demonstrated by the land use map (Trial exhibit 11) prepared by the Smith Group JJR (JJR), a nationally renowned land use planning firm, the project area had definite boundaries, defined land uses and interior road patterns. While all conceded that minor modifications of these plans may occur during the zoning approval process within the local communities, the testimony of Michael Prochaska, which the court deems entirely credible, reflected that the plan is expected to remain essentially the same once the zoning process is completed. Indeed, the proofs further reflected that the plan of the County was supported by extensive background research, which included traffic studies, topographical studies, environmental assessments, wetland analysis, a mitigation plan, engineering utility studies to determine infrastructure capacity, and preparations for final utility construction drawings. Of course, all of these studies are directly focused and were used to support the parameters of the plan envisioned in Trial exhibit 11. Based on the forgoing record, the court finds that the County's plans are sufficiently definite for purposes of sustaining its determination of necessity.

⁴ It does not appear that the Edward Rose decision affected the standard of proof relative to the issue of necessity, as distinct from that of public purpose.

Turning to the contention that the County lacks the final approval for its plans by different agencies of other governmental units, the court agrees that all final approvals have not been obtained. However, this is not an impediment to sustaining a finding that the County did not abuse its discretion. The sense of the testimony of Mr. Prochaska was that all of the outstanding regulatory approvals were on the verge of being approved and would be finalized upon the completion of the land assembly. He further opined that none would be impediments to successful completion of the project. The court agrees with the position of the County that the only remaining impediment to the finalization of the various regulatory approvals is the completion of the County's acquisition. In other words, as much as possible, the County has progressed sufficiently down the regulatory approval path for this Court to determine that the lack of finalization does not render the plans of the County for the development of the Project uncertain or speculative.

Another argument of the defendants with respect to necessity is that the County has not identified purchasers for these properties. Although the court agrees that the County has not secured firm buyers for the properties, the court does not deem that this makes the plans fatally speculative. Several witnesses, including Steven Bradford of Tammel Crow, an investor with extensive experience in developing successful airport related projects, testified that there would be a strong demand for these properties. Additionally, the court notes other evidence suggesting that what is crucial to the success of the Project is the completion of the land assembly process. It is only then, per the testimony of witnesses, including Bradford, that the County would be able to attract the large degree of private investment interest to make the Project viable. Although it may be

that the defendants have pointed to other proposed projects that have not blossomed as projected, based on the present record, the court cannot conclude that the lack of firm buyers for the properties would reflect an abuse of discretion.

Finally, the court addresses the land banking argument made by the defendants. The basis for this argument lies in the Baczewski and Barnard cases.

In Baczewski, supra, a board of education attempted to condemn property to build a high school. However, the record demonstrated that the board of education had no imminent plans to actually build the school, and that the present high school was sufficient to meet local need for 30 years. The sole basis for the decision to acquire the land was the belief that if the land was presently taken it would save money in the future based on the anticipated increase in property value.

The Supreme Court reversed a finding of necessity which was based on a need to take some thirty years in the future. The Court elaborated on the temporal aspect of necessity, "In condemnation proceedings in this State petitioner should prove that the property will either be immediately used for the purpose for which it is sought to be condemned or within a period of time ... [determined] to be the 'near future' or a 'reasonably immediate use.'" Id., 340 Mich 272.

In Barnard, a city sought to condemn private property to construct a five foot sidewalk. However, the scope of the condemnation action also included taking an additional forty-four feet. The city attempted to justify the need to acquire this additional property based on an asserted safety concern and on the potential future widening of the road. Yet, the proofs showed that no safety study had been done. Also, there were no

present plans to widen the road and one of the witnesses testified that the widening might not take place for another twenty to thirty years. The Court of Appeals affirmed a finding that the city had abused its discretion in condemning the additional land. The Court explained, "We believe that the words 'public necessity' and 'necessity' in the UCPA mean a necessity now existing or which will exist in the near future, not an indefinite, remote or speculative future necessity. Plaintiff's acquisition of the excess property, premised on the hope that it might widen Square Lake Road sometime within the next thirty years, does not meet the test of necessity." Id., 183 Mich App 572.

The record adduced in our case convinces this court that the present condemnation proceedings are factually dissimilar to the Baczewski and Barnard cases. First, per the testimony of Mr. Prochaska, there are plans to immediately begin construction activities that will affect each parcel in the project area. For example, the County plans to let out for bids for the construction of the utilities to serve the project area within months, with actual work on the utility portion of the Project area projected to commence by the spring of 2002. Additionally, in the spring of 2002, the storm water project will be commenced. Final plans for road improvements have also been completed with the Vining Road installation scheduled to begin in the summer of 2002. Thus, unlike the Baczewski and Barnard cases, plans for the immediate or nearly immediate future use of the properties are in place.

The County also convincingly explained that all of the land is necessary to make the project attractive to investors. A single assemblage of all of the property is necessary to achieve what the County's witnesses describe as a critical mass of property.

Once the improvements to the utilities, storm sewer system and roads are completed, the next and final phase of the Project, namely marketing and selling off the various parcels of the Project area not otherwise designated, can be accomplished. From the sense of the witnesses before the Court, the process envisioned by their testimony is not one that will be accomplished over decades, as was the case in the Baczewski and Barnard cases, but instead, per the plans of the County, will be realized in the near future. The fact that an absolute end date cannot now be determined, however, does not appear to the court to be a substantial impediment, given that plans are in place for the systematic completion of the Project in the near future.

For all the foregoing reasons, the court finds that the County did not abuse its discretion in determining that it was necessary to take the at-issue properties.

4. Public Purpose.

The last disputed element regards whether the proposed taking is for a public purpose. Before launching into a discussion of the factual merits of this issue, the court addresses several preliminary concerns.

As reviewed above, MCL 213.23 requires, *inter alia*, that the taking be “for public purposes within the scope of its power for the use or benefit of the public ...” (Emphasis added). In the defendants' Response to Plaintiff's Brief, pp 3-4, they contended that the phrase “for the use or benefit of the public” imposes a greater restriction on the government beyond the requirement that the taking be for “public purposes.” Regardless of the abstract or logical merits of this contention, it is largely foreclosed by the resolution of a similar issue in Poletown, *supra*, 629-630.

In Poletown, supra, the Court examined the language found in Const 1963, art 10, § 2, which states in pertinent part, “[p]rivate property shall not be taken for public use without just compensation” (Emphasis added). Plaintiffs had argued that there was a difference between public “use” and public “purpose,” and contended that they are not synonymous. Yet, the Court rejected this argument and held, “We are persuaded the terms have been used interchangeably in Michigan statutes and decisions in an effort to describe the protean concept of public benefit.” Id., 630.

Under Poletown, therefore, it would appear that demonstration that a condemnation project was for a public purpose would simultaneously establish that the taking was for the public use or benefit. Therefore, the court need not make a separate inquiry into whether a condemnation project which is found to serve a public purpose additionally is “for the use or benefit of the public.”

Also, the defendants contended that the reasoning and results of several appellate decisions require that the court find that the County cannot establish that it is maintaining these condemnation cases for a public purpose because the County is taking the property for “the purpose of transferring it to private entities for the operation of private businesses.” Brief in Support of Defendants’ Motion, p 6. They cite the following decisions: Tolksdorf v Griffith, 464 Mich 1, 9 (2001); In re Brewster Street Housing Site in City of Detroit, 291 Mich 313, 334 (1939); City of Center Line v Chmelko, 164 Mich App 251 (1987).

In Brewster Street, supra, 334, the Court appeared to announce an absolute rule prohibiting the use of eminent domain by the government “to take the property of one

man and give it to another.” However, since Brewster Street was decided in 1939, more contemporary cases have held or demonstrate that condemnation proceedings can be maintained even where the end result is that the property will be conveyed to some private entity. Poletown, supra; Lucas, supra.

In Poletown, supra, 632, the Court formulated the applicable rule of law:

There is no dispute about the law. All agree that condemnation for a public use or purpose is permitted. All agree that condemnation for a private use or purpose is forbidden. Similarly, condemnation for a private use cannot be authorized whatever its incidental public benefit and condemnation for a public purpose cannot be forbidden whatever the incidental private gain. The heart of this dispute is whether the proposed condemnation is for the primary benefit of the public or the private user.

Because in Poletown there was a specifically identified private person to whom the property would be conveyed upon completion of the condemnation proceedings, the Court also announced that its review would encompass a heightened standard of scrutiny:

The power of eminent domain is restricted to furthering public uses and purposes and is not to be exercised without substantial proof that the public is primarily to be benefitted. Where, as here, the condemnation power is exercised in a way that benefits specific and identifiable private interests, a court inspects with heightened scrutiny the claim that the public interest is the predominant interest being advanced. Such public benefit cannot be speculative or marginal but must be clear and significant if it is to be within the legitimate purpose as stated by the Legislature. (Emphasis added).

Id., 634-635.

In Poletown, supra, the Court ultimately held that the plaintiff had made the requisite showing that the condemnation project was primarily for the public benefit. The facts presented showed that the condemned land would be conveyed to General Motors which would build a car manufacturing plant on the site. The plaintiff was able to show that this would substantially benefit the residents of the City of Detroit. The Court summarized this testimony and concluded as follows:

In this regard the city presented substantial evidence of the severe economic conditions facing the residents of the city and state, the need for new industrial development to revitalize local industries, the economic boost the proposed project would provide, and the lack of other adequate available sites to implement the project.

....

In the instant case the benefit to be received by the municipality invoking the power of eminent domain is a clear and significant one and is sufficient to satisfy this Court that such a project was an intended and a legitimate object of the Legislature when it allowed municipalities to exercise condemnation powers even though a private party will also, ultimately, receive a benefit as an incident thereto.

The power of eminent domain is to be used in this instance primarily to accomplish the essential public purposes of alleviating unemployment and revitalizing the economic base of the community. The benefit to a private interest is merely incidental.

Id., 633, 634.

Following Poletown, the Court of Appeals in Chmelko affirmed the dismissal of condemnation proceedings. The Court stated, "We affirm because it seems clear that at the hearing on the necessity for the condemnation the reasons given by the city for the condemnation were revealed to be a complete fiction. The record reveals that the city

acted as an agent for a private interest, a local car dealership." Id., 253. In reaching this result, the Court of Appeals found that because a specific private party would benefit from the taking, the heightened scrutiny test would be applied. Id., 262.

The record in Chmelko revealed that a car dealership had unsuccessfully attempted to purchase adjoining property for the purpose of storing its cars. It then complained to the city and intimated that if it could not obtain the property it might leave the downtown area where it was a major tenant. The city and the car dealership reached an agreement under which the latter would completely underwrite all of the city's costs if it would condemn the property. Although the city attempted to justify its actions based on a desire to expand parking, in fact no parking problems existed. It also contended that the action was necessary to keep the car dealership located in the downtown area.

Based on these facts, the Court of Appeals held,

We see no "clear and significant" public benefit. There is no "substantial proof" that the public is to be primarily benefitted. In fact, the primary beneficiary will be Rinke Toyota. The public's interest is marginal or, indeed, speculative. We therefore conclude that the city's determination does not pass heightened judicial scrutiny under the standard of Poletown.

....

Any benefit to the public is purely derivative of the primary purpose: the city's continued good relations with Rinke Toyota. While it may be true that the public would derive some benefit from the expansion plans of Rinke Toyota, that would be true of any business. That the automobile dealer is a substantial factor in the business life of the city does not permit it to use city government to eliminate small businesses in order to facilitate its growth.

Id., 262-263, 263-264.

However, in Lucas, supra, the Court sanctioned condemnation proceedings in which the City of Detroit attempted to condemn parcels which were described by the Court as follows:

As the trial court's review of the testimony showed, the Lucases' two parcels were an essential bridge between the two historic theater properties, and the plan of the city called for the construction of a structure to house retail transition businesses related to, and adjacent to and between, the two theaters. The trial court did find that there was no necessity for the condemnation of two other parcels across the street. The Lucases' parcels, along with another parcel, are at the very center of the planned social and economic traffic pattern between the two theaters.

Id., 180 Mich App 53.⁵

In Edward Rose, as discussed above, the Court used the Poletown heightened scrutiny test to conclude that a private cable provider primarily benefitted from a condemnation action brought to secure cable access by the private cable provider to tenants in an apartment building, and that, as such, the action could not be maintained. The Court noted that the action of the city was "directed toward and would benefit a single entity," namely the cable company. Id., 644. Also, the fact that the city was not acting under a legislative finding of public purpose figured into the court's determination, since unlike Poletown, the Court's standard of review was not confined by presumptively valid legislative findings of public purpose. Essentially, the Court found that the city had failed

5

The Lucas case primarily dealt with necessity issues, as opposed to offering a distinct analysis of the public purpose issue. However, the facts of the case are important to note since they offer a paradigm of what sort of developments, short of the massive economic rehabilitation of the City of Detroit that was used to justify Poletown.

to adduce facts on the record that would support the various generalized statements by the city as to what public benefits would be realized upon the completion of the project. Instead, the case represented an attempt by a private entity to use the city's powers to acquire what it could not get through arm's length negotiations. The Court concluded that since the benefit to the private cable company predominated over the asserted public benefits, the Court struck down the ordinance and authorizing resolution that authorized the condemnation action. *Id.*, 643-644.

Finally, in Tolksdorf the Court invalidated the private roads act, MCL 229.1, *et seq.*, on the basis that the act authorized a taking of private property for the primary benefit of private entities. *Id.*, 9-10. The Court relying on the heightened scrutiny test, explained,

[T]he primary benefit under the private roads act inures to the landlocked private landowner seeking to open a private road on the property of another.... [A]ny benefit to the public at large is purely incidental and far too attenuated to support a constitutional taking of private property. We find that the private roads act is unconstitutional, because it authorizes a taking of private property for a predominantly private purpose.

(Authority omitted).

In reviewing these cases, as suggested by the County at oral argument, there appears to be a spectrum of decisions in which private gain or public benefit is measured. At one end of the spectrum stand cases where the condemnation actions were dismissed because the primary beneficiary was a private party, such as Chmelko and Edward Rose, where, as explained above, the municipality brought the condemnation action as a result of the urging of some specific private party, who would directly benefit from it and where

the asserted justification for the project lacked a factual foundation. Tolksdorf, although not a condemnation action, *per se*, also fits into this pattern, since under the private roads act, government action that would lead to a taking of private property would be initiated at the bequest of another private party, who would directly and immediately benefit from the taking. In all of these cases, the public benefit was marginal. In none of these cases was it shown that the condemnation project would have a significant impact on the municipality's economic or social well being. Instead, given the narrow scope of the condemnation, the primary benefit could only flow to the private party on whose behalf the condemnation action was commenced.

Standing on the other side of the spectrum is the Poletown decision. In that case, the Court sustained the taking and found that it was primarily for the public benefit - and hence, served a public purpose, under a factual showing that demonstrated the community as a whole would primarily benefit by the taking. A significant aspect of that case was the fact that the property sought to be taken was an integral part of an overall land use plan that affected an entire area of the city. In Lucas, although the public/private benefit issue was not thoroughly examined, it appears that the Court also could have relied on a factual record that showed the property to be taken was an integral part of an overall plan of the municipality to renovate and make more economically viable a certain commercial district. Finally, in both of these cases, the condemnation projects had a unique quality to them that supported a finding that the takings were primarily for a public purpose and not primarily for private gain. In Poletown, this characteristic arose largely due to the massive size of the project itself, along with the anticipated substantial number of

persons expected to be employed, with the economic and social benefits to the community as a whole that could be expected to directly flow from this. In Lucas, the location of the project gave it a singular quality insofar as the properties lay in the middle of an historical theater district which the city sought to rejuvenate as part of larger revitalization plans.

The point to made by reviewing these cases is that merely because lands taken through condemnation proceedings will be conveyed to a third party will not, *per se*, necessarily result in a finding that the proposed taking is not for a public purpose, and hence, invalidate the proceedings. Instead, in these cases, the courts engaged in a balancing test under the analysis originally found in Poletown, which continues to be used, as witnessed by the Court's use of it in the recent Tolksdorf decision.

References to the foregoing cases,⁶ however, raises the issue of whether the heightened scrutiny test of Poletown should be applied in the present case. The County argues that the heightened scrutiny test of Poletown should not be applied since there are no identifiable parties to whom the land will be conveyed. Defendants maintain that it should apply since there is no dispute that the County certainly intends upon the completion of the project to market and sell much of the land to specific private parties. Therefore, some specific -although not presently identifiable- private party will benefit from County's actions in having secured the land.

6

It should be noted that both parties cited to appellate authority from other jurisdictions. Yet, it is no secret that among different jurisdictions, judicial attitudes toward what constitutes a public purpose for condemnation purposes vary considerably. Because resort to out-of-state cases would inevitably lead to determining collateral issues concerning whether the cited cases' condemnation jurisprudence tracked that of Michigan, the sounder course is to use Michigan cases to explain what is required under Michigan law.

Upon reflection, the court agrees with the defendants that, notwithstanding that in Poletown, supra, 634-635, the Court's articulation of the applicability of the heightened scrutiny standard was premised on "condemnation power ... [being] exercised in a way that benefits specific and identifiable private interests"(emphasis added), because the County's actions will ultimately confer some benefit to a specific and identifiable private party, the Court finds that the heightened scrutiny test of Poletown applies to this case.

In the present case, as noted in Poletown, supra, 632, "The heart of this dispute is whether the proposed condemnation is for the primary benefit of the public or the private user." Although, as found above, the fact that there is no one identifiable private party who will benefit from this action does not preclude applying the heightened scrutiny test of Poletown, that fact does influence how this court weighs the private interests at stake.

Unlike Chmelko, Edward Rose, and Tolksdorf, there is no basis for concluding that the County is acting as the tool of a private party who cannot otherwise obtain desirable property through arm's length negotiations. Indeed, because no private party stands behind the County's efforts to obtain the land, it cannot even be said that a private party could not have acquired the land without the County's condemnation powers being invoked. The Project also differs since a private party's efforts to better its own interests is not the driving force or even the originating force behind the Project. Instead, Wayne County was required to acquire a large portion of the aeropark property as part of a Noise Mitigation Program funded by the Federal Aviation Administration (FAA). FAA regulations required the property to be re-used for economic development purposes. The

County seeks to acquire additional land to provide for what in its opinion would be more viable development for land uses compatible to an airport area. On this latter issue, unlike the foregoing cases, in the present condemnation actions, the land sought by the County that will be sold to private parties would be integrated into a general land use plan that contemplates public uses, such as golf courses, bike paths, and open spaces. See Tr., 11-14-01, p 26. The facts before the Court, therefore, do not suggest that the condemnation action was meant to benefit a narrow private interest as in Chmelko, Edward Rose, and Tolksdorf. Instead, the private parties, whoever they may be, who do purchase the land from the County after the conclusion of these proceedings and after the County has made the improvement to the utilities, storm sewers and roads and has otherwise prepared the land for use, will be in roughly the same position as other private parties who incidently benefit from such improvements. Lastly, unlike Chmelko, Edward Rose, and Tolksdorf, the private parties who do ultimately purchase the land from the County do not presently have identifiable pre-existing interests which these proceedings directly benefit. In short, the Court finds that the condemnation of the properties will only indirectly benefit private interests.

Balanced against the foregoing indirect private interests, the court must weigh whether public purposes are furthered by these condemnation proceedings. It is to be recalled that among the purposes for these proceedings the Resolution of Necessity identified "(i) creation of jobs for its citizens^f; (ii) the stimulation of private investment and redevelopment in the County to insure a healthy and growing tax base so that the County can fund and deliver critical public services." Another factor cited in the Resolution was that

the Project would support "development opportunities that would otherwise remain unrealized."

In light of the Poletown and Lucas decisions, this court finds that, at least in the abstract, these items could be "public purposes" which the County could legitimately seek to further through condemnation proceedings. These items all relate to what was described in Poletown, supra, 634, as "the essential public purposes of alleviating unemployment and revitalizing the economic base of the community." The real question is whether the factual record adduced in this case reflects that the takings of defendants' property, to paraphrase Poletown, supra, 634, 635, will clearly and significantly inure to this public purpose or whether the public benefit to be gained by the takings in these cases is "speculative or marginal." In determining this issue, this court is mindful of the Court's admonition in Poletown, supra, 634, "Our determination ... does not mean that every condemnation proposed ... will meet with similar acceptance simply because it may provide some jobs or add to the industrial or commercial base."

As to whether completion of the Project, inclusive of the properties sought to be condemned, will lead to a substantial increase in jobs in the County, several studies commissioned by the County tended to show that completion of the Project would create substantial numbers of jobs. One study conducted by the Economic Research Associates (the ERA study), predicted that approximately 18,000 new jobs would be created at total build out of the Project. Another study, performed by the Woodward Companies (the Woodward Study) predicted the creation of some 13,000 construction jobs and afterwards some 24,000 total jobs would be created annually upon completion of the Project.

The defendants did not seek to admit into evidence any studies or expert witnesses that would contradict these studies. Instead, defendants maintain that these figures cannot be used since they were premised on a project consisting of some 1800 acres. On this point it should be noted that the County's plan did scale back the acreage for the Project from the originally proposed 1800 acres to the presently configured 1200 acres. Yet, the court rejects defendants' contention that these studies provide no support for the County's finding that the Project would result in a substantial number of jobs. Although a smaller project was approved, nonetheless, the decrease in the size of the Project cannot be said to have left the Project without the essential attributes of the Project as originally forecasted. Although smaller, the Project under review still remains very sizeable and retains the overall characteristics of the plans reviewed. Witnesses for the County, Dr Jack Kasarda and Steven Bradford, both of whom are professionally involved in airport development, testified that the County would still realize the desired benefits of the scaled back version of the Project. While it may be that these studies cannot now be relied on to give a precise estimate of the number of jobs that completion of the Project will create, both immediately and long term, no case requires such precision. Given that the Project as presently configured still represents a sizeable portion of the original plan and much of the essential attributes of that plan still exist in the Project as presently

configured, the County could legitimately infer that completion of the Project would add a significantly large number of new jobs, at least comparable to that at issue in Poletown.⁷

The next factor cited in the Resolution concerned attracting substantial numbers of new businesses and increasing the County's tax base. As noted earlier, witnesses for the County testified of the strong demand that would be generated for the properties as part of an integrated master planned development. Further, the Woodward study found that during the construction of the Project there would be generated approximately \$20 million in personal income tax and approximately \$32 million in resultant sales taxes being paid for the material purchased for the construction of the Project. Afterwards, the jobs created by the Project could be expected to generate approximately \$17 million in personal income tax. Additionally, the local townships affected by the Project would stand to gain an increase of roughly \$42 million additional revenue in property taxes.

Another factor cited, "development opportunities that would otherwise remain unrealized," is less readily quantified, but nonetheless real. The County's witnesses all described the Project as a fairly unique and creative way of blending together a variety of land uses that would take advantage of their proximity to the Detroit Metropolitan Airport. From these, the court finds that completion of the Project would enable the County to create a unique environment that would attract business opportunities for the community which could not be readily replicated elsewhere.

7

It is interesting to note that in Poletown the size of the proposed project was less than half of the Project as it is presently configured. Also, the numbers of jobs that were estimated it would have generated were approximately 6,100. See, Poletown, supra, 637, 645 n 15, (Fitzgerald, J., dissenting).

In short, the court finds that the record reflects that the public purpose to be served by the takings involved in these cases will significantly and clearly inure to the public's benefit. Given that the private interests that may be served by the condemnation of the at issue properties are at best incidental and speculative, the court further finds that, under the heightened scrutiny test of Poletown, the condemnation of defendants' property primarily serves the benefit of the public.⁸

5. Conclusion.

For all the reasons stated above, the court finds that MCL 213.23 provides sufficient statutory authority for the County to maintain these condemnation actions; that the defendants have failed to show that the County abused its discretion in finding that the condemnation of these properties was necessary; and finally, that the condemnation of defendants' properties primarily serves a public purpose. Accordingly, defendants' motion for summary disposition will be denied.

HON. MICHAEL E. SAPALA

Chief Judge

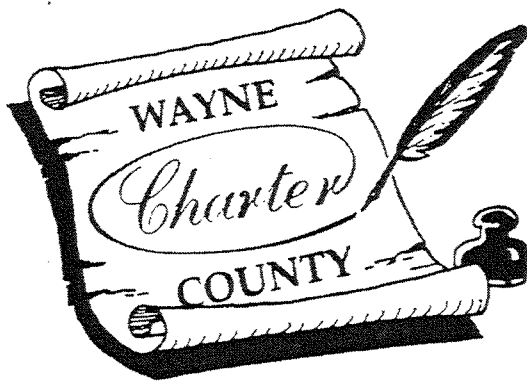
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WAYNE COUNTY CLERK
BY [Signature]
DEPUTY CLERK

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The court has purposely avoided determining the issue of who has the burden of proof on the issue of demonstrating, under Poletown, whether the condemnation primarily serves a public or private purpose or benefit. In light of the strong proofs adduced at trial, even if the County bore the burden of proof on this issue, the court's conclusions reached above would not change. Thus, it is not necessary to determine whether the statutory burden of proof that is otherwise placed on the landowner to show that the condemning authority abused its discretion is set aside whenever the heightened test of Poletown comes into play.



Preamble

We, the people of Wayne County, by God's grace,
and with gratitude for His blessings,
for the land rich in natural resources we inhabit,
for the freedom we enjoy
governing ourselves in a democratic society,
and for our role in putting the World on wheels,
and being confident
that we will overcome all present and future challenges,
adopt this Home Rule Charter
for the purpose of providing more efficient, responsive,
and accountable government.

ARTICLE I GENERAL PROVISIONS

(Sections)

1.111 Declaration of Rights

(a) Wayne County shall not discriminate against residents in the delivery of services.

(b) Wayne County shall not discriminate against any employee, applicant for employment, or applicant for award of a County contract because of any factor not related to job or contract performance.

(c) Wayne County shall not contract

with any person or firm that discriminates against employees or applicants for employment because of any factor not related to job performance.

(d) Wayne County may institute any legal program of affirmative action.

1.112 Home Rule Powers

Wayne County, a body corporate, possesses home rule power enabling it to provide for any matter of county concern and all powers conferred by con-

stitution or law upon charter counties or upon general law counties, their officers, or agencies.

Wayne County is not required to perform any service or function mandated by any statute applicable only to general law counties, their officers, or agencies.

1.113 Boundaries

The boundaries of Wayne County existing when this Charter takes effect may be changed only in accordance with law.

ARTICLE II ELECTIONS

CHAPTER 1 APPORTIONMENT

(Sections)

2.111 Apportionment of County Commission Districts

The County Apportionment Commission shall establish County Commission districts based exclusively upon population within 12 months after final census figures are certified by the United States Government. The districts shall be contiguous, compact and as nearly square as practicable, without regard to partisan political advantage. The districts shall be drawn so that each city, township, and village has the largest possible number of complete districts within its boundaries, and to assure proper and adequate representation of racial and language minorities in the County.

2.112 Apportionment Commission

Unless otherwise required by law, the County Apportionment Commission consists of the County Clerk, the Treasurer, the Prosecuting Attorney and the County chairperson of each of the 2 political parties whose candidates for Secretary of State received the most votes in the last election for that office. If a party has no County chairperson, a representative of that party shall be appointed by its state central committee. The County Clerk convenes

the Commission. Three members of the Commission constitute a quorum. All action is by majority vote of Commissioners serving.

2.113 Apportionment Procedure

Unless otherwise required by law, the Commission has 30 days after certification of official census figures to approve and file an apportionment plan with the County Clerk and the Secretary of State. If the Commission fails to act within the 30 day period or an extension granted by the Court of Appeals, any registered voter may submit a plan to the Commission for approval. From the plans submitted, the Commission shall choose a plan meeting the requirements of law. The plan chosen by the Commission shall be filed with the County Clerk within 30 days of the initial or extended deadline for filing its plan.

2.114 Appeal of an Apportionment Plan

Any registered voter of Wayne County may, within 30 days of the filing of the plan with the County Clerk, ask the Court of Appeals to determine if the plan complies with the law and this Charter. A decision of the Court of Appeals may be appealed to the State Supreme Court as provided by law.

2.115 Final Apportionment Plan

A final apportionment plan is effective until a new plan is adopted after

release of the next United States final census figures.

2.116 Elections

The election of County Commissioners and other elected County Officers shall be conducted in the manner and at the times required by law and this charter.

CHAPTER 2 ELECTED OFFICERS

2.211 Terms

Unless otherwise provided by law or in accordance with this Charter, the Sheriff, the Prosecuting Attorney, the County Clerk, the Treasurer, the Register of Deeds, and the Drain Commissioner are elected at large on a partisan basis to 4 year terms, which expire at the same time as the term of the Governor.

2.212 Terms and Vacancies

The method of electing and qualifications of the Prosecuting Attorney, Sheriff, County Clerk, County Treasurer, Register of Deeds, and Drain Commissioner are those provided by law. If permitted by law, a vacancy in any office shall be filled by the appointment of the CEO with the approval of a majority of Commissioners serving. A successor shall be elected, for the unexpired term if any, at the next regularly scheduled County general election.

ARTICLE III LEGISLATIVE

(Sections)

3.111 County Commission

The County Commission is the legislative body of the County and is vested with all legislative authority. The Commission has 15 members.

3.112 Election; Filling of Vacancies

(a) The term of office of a Commissioner is 2 years, concurrent with that of a State representative. Commissioners are elected in even numbered years from single member districts on a partisan basis.

(b) If a vacancy occurs in the office of a Commissioner by death, resignation, removal from the district, or removal from office, the vacancy shall be filled by appointment within 30 days, by a majority of Commissioners serving. The appointee shall be a registered voter of the district belonging to the same political party as its previous Commissioner.

(c) If the vacancy is filled in an odd-numbered year, the appointee shall serve until a successor is elected in a special election in accordance with law. If the vacancy is filled in an even-numbered year, the appointee shall serve out the unexpired term. If a vacancy is not filled by appointment, it shall be filled by a special election regardless of the year when it occurs.

3.113 Compensation

The County Commission shall provide compensation for Commissioners by ordinance. A change in compensation after first established may not be made effective before the commencement of a new term. Any change in compensation shall be approved by the Commissioners at least 60 days prior to the primary election in which candidates for the next Commission term are to be nominated. The provision of a cost-of-living allowance or other compensation or

reimbursement which would have the effect of increasing the compensation of a Commissioner is prohibited.

3.114 Meetings, Rules and Procedures

(a) At the first meeting of each new term, the Commission shall elect a chairperson and other officers of the Commission. The Commission shall establish its own rules and procedures.

(b) The Commission shall hold at least 2 regular meetings per month. The Commission may provide for additional regular meetings. No fewer than 8 additional meetings shall be held annually in communities of the County; at least 4 meetings shall be held outside the County seat and at least 4 meetings shall be held within the County seat at locations other than the regular meeting place. The chairperson of the Commission may call special meetings. The chairperson shall call a special meeting upon written request of 3 Commissioners.

(c) The vote on final adoption of any resolution or ordinance shall be by roll call by a majority, or a 2/3 majority if required by this Charter, of Commissioners serving. The Commission's rules shall provide for votes other than on final adoption. A majority of Commissioners serving constitutes a quorum.

(d) The Commission shall have a Ways and Means Committee and an Audit Committee. The appropriation ordinance shall be referred to the Ways and Means Committee. The Audit Committee shall review the reports of the independent auditor and the Auditor General and shall monitor compliance with audit findings. At least 5 Commissioners shall serve on each committee and no Commissioner may serve on both. The County Commission may provide for other committees by resolution.

3.115 Powers and Duties

Powers and duties of the Commission shall be exercised by ordinance if required by law or this Charter; otherwise they may be exercised by resolution. In addition to other powers and duties prescribed in this Charter, the Commission may:

- (1) Adopt, amend, or repeal ordinances or resolutions.
- (2) appropriate funds, levy taxes, fees and other charges, and authorize borrowing in accordance with Article V.
- (3) Approve the making of all contracts by the county.

(4) Approve or reject appointments by the CEO of the Deputy CEO, department heads, their deputy directors, and members of boards and commissions in accordance with Article IV.

(5) Override a veto of the CEO by a 2/3 majority of Commissioners serving.

(6) Approve, amend, or reject rules or regulations issued by any department or officer of the County. If the Commission fails to act within 30 days of the submission of any rules or regulations, the rules or regulations become effective. The Commission may provide a procedure by which emergency rules and regulations become effective before their submission to the Commission.

(7) Require any county officer or employee to testify and to produce records and documents.

(8) Subpoena records, documents, and witnesses and administer oaths.

(9) Appoint and remove, by a majority vote of Commissioners serving, the members of the Board of County Canvassers, the Metropolitan Airport Zoning Board of Appeals, the Planning and Development Commission, and the County Election Board.

(10) Appoint and, within authorized appropriations, provide compensation for employees of the Commission. The Commission shall appoint a Commission Clerk who shall be responsible for maintaining official records of the Commission and other duties prescribed by the Commission. The Commission Clerk may be removed by a majority of Commissioners serving.

(11) Merge the department of Register of Deeds with the department of County Clerk or provide for their subsequent separation.

(12) Judge the qualifications of Commissioners.

(13) Submit amendments to this Charter for approval by the registered voters.

(14) Exercise any power granted by law to Charter or general law counties except those prohibited by this Charter.

(15) Establish the compensation of other elected officers as provided by law or ordinance.

(Article III - Continued on Page 5)



Citizen participation at Charter hearing.

ARTICLE III LEGISLATIVE — Continued

3.116 Purchasing Policy

The Commission shall establish by ordinance the purchasing policy of the County. The ordinance shall provide for solicitation of sealed bids by advertisement for purchases over a specified amount.

3.117 Public County Hospital Facilities

The Commission shall provide by ordinance for the operation, maintenance, and administration of public County hospital facilities and shall assure an adequate level of physical and mental health services for the residents of the County.

3.118 Non-Interference in Administrative Affairs

Except insofar as is necessary in the performance of the duties of office or as otherwise provided by this Charter, a Commissioner or an employee of the Commission shall not interfere, directly or indirectly, with the conduct of any executive department.

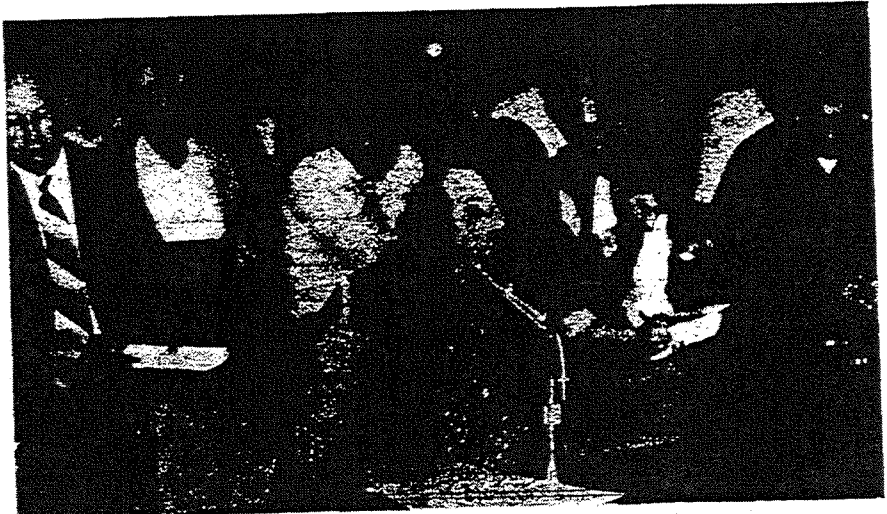
3.119 Auditor General

(a) A legislative Auditor General may be created by ordinance. The

Auditor General shall be appointed by a majority of Commissioners serving. The Auditor General may be removed for cause by a 2/3 vote of the Commissioners serving. The Auditor General shall be a CPA with at least 5 years experience in auditing governmental bodies. The compensation for the Auditor General shall be established by the Commission.

(b) The Auditor General shall perform duties required by the Commission and shall be supervised exclusively by the Commission and may inspect county records and property.

The Auditor General may employ staff or consultant auditors within authorized appropriations.



Charter Commission holds public hearing in Taylor.

ARTICLE IV EXECUTIVE BRANCH

CHAPTER 1 CHIEF EXECUTIVE OFFICER

(Sections)

4.111 Chief Executive Officer

The Chief Executive Officer (CEO) is the head of the executive branch of County government.

4.112 Powers and Duties

(a) The executive and administrative power of the County is vested in the CEO. The CEO has power and duty to:

(1) Supervise, coordinate, direct, and control all county facilities, operations, and functions except as otherwise provided by law or this Charter;

(2) Implement and enforce the laws of this State and County ordinances, resolutions, orders, and rules;

(3) Exercise all powers and duties granted the CEO by law, ordinance, or other provisions of this Charter;

(4) Submit reports and recommendations to the Commission on any matter affecting the County;

(5) Exercise powers and duties required for emergency preparedness;

(6) Maintain a Planning division in the office of the CEO; and

(7) Veto any ordinance or resolution having the effect of law, or approving a contract, or any line item in an appropriation ordinance by transmitting to the Commission written certification of the veto and reasons therefor. If the CEO fails to exercise the veto within 10 days after the submission of the ordinance or resolution to the CEO, the action of the Commission takes effect.

(b) The Cooperative Extension Service shall be maintained in the executive branch.

4.113 Reorganization Plan

(a) Within 90 days after taking office, the CEO shall submit a proposed Executive Branch reorganization plan to the Commission. The plan may provide for the creation or abolition of any department, agency, division, or officer not expressly exempted by this Charter. The plan may assign all the powers, duties, and functions of the County among the agencies or departments not prohibited by this Charter. The CEO

may propose amendments at any time to the Executive Branch reorganization plan.

(b) The Commission may approve or reject the proposed plan or any proposed amendment. If the Commission fails to act on the proposed plan or a proposed amendment within 90 days after its submission, the plan or the amendment becomes effective.

4.114 Transfers of Property and Records

All property, records, and equipment of any department, agency, board, commission, instrumentality, or other administrative unit of County government affected by this charter or a reorganization plan shall be transferred to the appropriate organizational unit established under this Charter or a reorganization plan as directed by the CEO.

4.115 Coordination of Road and Public Works Functions

The CEO shall coordinate the project activities of the departments of Drain Commissioner, Road Commission, and Public Works which affect County roads. The Road Commission and the Director

(Article IV - Continued on Page 6)

ARTICLE IV**EXECUTIVE BRANCH — Continued**

Public Works shall submit an annual project plan to the CEO 6 months before the next fiscal year and shall notify the CEO of any change in the project plan within 30 days.

4.116 Coordination of County Functions

The CEO shall supervise, direct, and control functions of all departments of the County except those headed by elected officials, and shall coordinate the various activities of the County and unify the management of its affairs.

4.121 Deputy CEO

The Office of the Deputy CEO is created. The Deputy CEO shall exercise the powers and duties of the CEO if the office of CEO is vacant or if the CEO is absent or disabled. The Deputy CEO shall also perform powers and duties delegated by the CEO.

4.122 Vacancies

If both the office of CEO and Deputy CEO become vacant, a majority of the Commissioners serving shall appoint an acting CEO to serve until the office of CEO is filled in accordance with this Charter.

**CHAPTER 2
Departments Headed by Elected Officers****Part I - Prosecuting Attorney****4.211 Department Created**

The department of Prosecuting Attorney is hereby created. The head of the department is the elected Prosecuting Attorney.

4.212 Powers and Duties

The powers and duties of the department are those provided by law for prosecuting attorneys. Additional powers and duties may be assigned the department by a reorganization plan adopted in accordance with this Charter.

Part II - Sheriff**4.221 Department Created**

The department of Sheriff is hereby created. The head of the department is the elected Sheriff.

4.222 Powers and Duties

The powers and duties of the department are those provided by law for

sheriffs. Additional powers and duties may be assigned the department by a reorganization plan adopted in accordance with this Charter.

4.223 Patrol of the Parks

The department shall provide patrol services for the County parks system and assure the safety of users of the County parks.

4.224 Contracts with Local Governments

The department may contract with units of government within the County to provide services with the approval of the Commission.

Part III - County Clerk**4.231 Department Created**

The department of County Clerk is hereby created. The head of the department is the elected County Clerk.

4.232 Powers and Duties

The powers and duties of the department are those provided by law for county clerks except as provided in Article III. Additional powers and duties may be assigned the department by a reorganization plan adopted in accordance with this Charter.

4.233 Central Records

The department shall maintain central records of the County as provided by law or ordinance.

4.234 Printing and Duplication

The department shall supervise and control the County printing and duplication facility.

Part IV - County Treasurer**4.241 Department Created**

The department of County Treasurer is hereby created. The head of the department is the elected Treasurer.

4.242 Powers and Duties

The powers and duties of the department are those provided by law for treasurers. Additional powers and duties may be assigned the department by a reorganization plan adopted in accordance with this Charter.

4.243 Investment Power

The department shall receive, deposit, and invest funds belonging to and under the control of the County as provided by law and this Charter.

4.244 Tax Collections and Delinquent Taxes

The department shall collect current taxes assessed on the County tax rolls within the City of Detroit, determine, settle, and collect delinquent taxes, and act as the agent for the County in connection with the Delinquent Tax Revolving Fund.

Part V - Register of Deeds**4.251 Department Created**

The department of Register of Deeds is hereby created. The head of the department is the elected Register of Deeds.

4.252 Powers and Duties

The powers and duties of the department are those provided by law for registers of deeds. Additional powers and duties may be assigned the department by a reorganization plan adopted in accordance with this Charter.

Part VI - Drain Commissioner**4.261 Department Created**

The department of Drain Commissioner is hereby created. The head of the department is the elected Drain Commissioner.

4.262 Powers and Duties

The powers and duties of the department are those provided by law for drain commissioners. Additional powers and duties may be assigned the department by a reorganization plan adopted in accordance with this Charter.

4.263 Annual Project Plan

The department shall submit an annual project plan to the CEO 6 months before the next fiscal year and shall notify the CEO of any change in the project plan within 30 days. The Drain Commissioner shall coordinate the project activities of the department with other County activities affecting County roads as directed by the CEO.

ARTICLE IV**EXECUTIVE BRANCH — Continued.****Part VII - General Provisions Governing
Departments Headed by Elected
Officials****4.271 Reorganization**

The powers and duties specifically delegated by this Charter to departments headed by elected officers shall not be modified by a reorganization plan.

**4.272 Functions Performed within
Authorized Appropriations**

Departments headed by elected officers shall exercise their powers and duties within authorized and allotted appropriations.

**CHAPTER 3
OTHER DEPARTMENTS****Part I - Corporation Counsel****4.311 Department Created**

The department of Corporation Counsel is hereby created. The director of the department is the Corporation Counsel. The director and deputy director shall be attorneys licensed to practice law in Michigan.

4.312 Powers and Duties

Except as otherwise provided by law or this Charter, the department shall provide legal services to the Commission, the CEO, and all County agencies, and represent the County in all civil actions in which the County is a party.

4.313 Temporary Counsel

The Commission and the CEO may obtain the services of separate legal counsel on a temporary basis.

4.314 Division of Human Relations

a) The division of Human Relations is hereby created in the department of Corporation Counsel. The director of the division shall be appointed by the CEO for a term of 6 years. The director of Human Relations may be removed for cause by the CEO with the approval of a majority of the Commissioners serving.

b) The division shall provide advice to County agencies on matters of employment discrimination and contract compliance and may request the Commission and CEO to take appropriate action against non-complying agencies. The director shall provide reports at least monthly to the Commission and the CEO concerning the activities of the division.

PART II - Personnel**4.321 Department Created**

The Personnel department is hereby created. The director of the Personnel department shall have at least 5 years experience in personnel administration.

4.322 Powers and Duties

The Personnel department shall:

- (1) Perform the personnel and labor relations functions for all agencies of the County, except as otherwise provided by law or this Charter; and
- (2) Establish policies and programs for recruitment of potential employees and for training and development including career planning.

4.323 Labor Relations

(a) The division of Labor Relations is hereby created within the Personnel

department. The director of the Labor Relations division shall be under the direct supervision of the CEO.

(b) The division of Labor Relations shall act for the County under the direction of the CEO in the negotiation and administration of collective bargaining contracts.

4.324 Employment Planning

(a) The division of Employment Planning is hereby created within the Personnel department.

(b) The division of Employment Planning shall:

- (1) Establish and administer a classification plan for all positions in the classified service;
- (2) Prepare, administer, and grade examinations of the classified service; and
- (3) Establish a uniform employee performance appraisal system for the classified service which shall rate each person at least once annually, furnishing a copy of the appraisal to the employee.

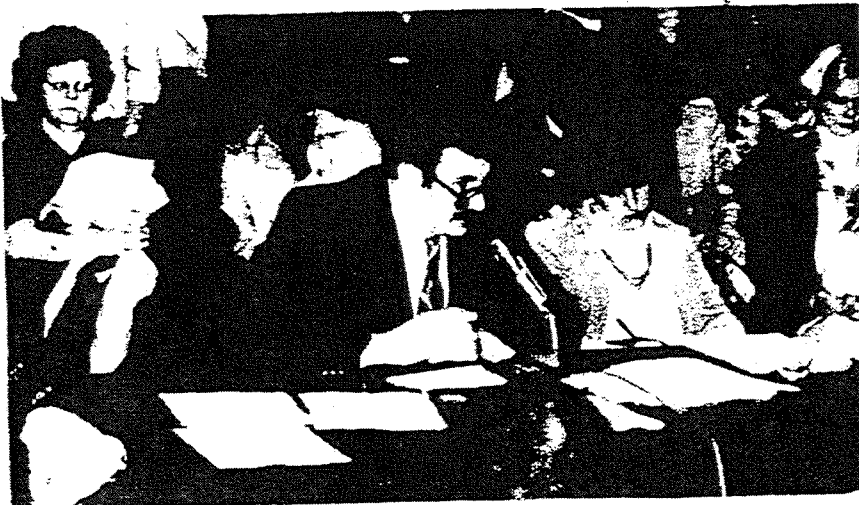
4.325 Classification Plan

(a) The classification plan, to the extent practicable and possible, shall assemble duties, responsibilities, and qualifications into broad organizational groupings. Each classification shall have common levels of responsibility and complexity. At least 4 persons must hold positions in each classification unless otherwise provided by ordinance. Entry into classified positions shall be by open, competitive examination. The classification plan and any amendment of the classification plan shall be filed with the County Clerk as a public record. The plan or an amendment is effective 30 days after filing or at a later date prescribed in the plan.

(b) To the extent practicable, the division of Employment Planning shall use professionally developed examinations supported by empirical data demonstrating that the examination is predictive of, or significantly related to, the applicant's ability and capacity to serve in the position.

(c) The classified service includes all employees of the County except:

- 1) Elected, officers and their deputies;
- 2) Persons holding appointments under this Charter;
- 3) Members of boards and commissions;
- 4) Persons employed to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the County;
- 5) Managerial or confidential positions as prescribed by ordinance; and



Citizen comment from Westland.

ARTICLE IV**EXECUTIVE BRANCH — Continued**

6) Employees serving directly under the County Commission or the CEO.

4.326 Civil Service Commission

(a) The Civil Service Commission is hereby created as a division within the Personnel department. The Commission consists of 3 members appointed for terms of 6 years, 1 of which expires in January of each odd year, but of the members first appointed, 1 shall serve a term of 2 years, 1 a term of 4 years, and 1 a term of 6 years. A commissioner shall not hold any other public office, except that of notary public, or be employed in any other capacity by the County or any other governmental agency, or any board, commission or department thereof. One commissioner shall be a qualified elector from the County seat, one commissioner shall be a qualified elector from outside the County seat, and the third member shall be a qualified elector with knowledge of and experience in labor relations. Not more than 2 commissioners may be from the same political party. A member may be removed by the CEO for cause.

(b) The Civil Service Commission shall meet at least once each month. Members shall be paid on a per diem basis. The Commission may not meet more than 6 days a month, except with prior approval of the director of the Personnel department.

(c) The Civil Service Commission shall hear and decide grievance cases arising under the classified service and grievance cases of examinees based on an allegation that the examination did not comply with the requirements of the Charter or the rules established by the division of Employment Planning. The Civil Service Commission may grant relief to an examinee only upon a finding of clear and convincing evidence that the examination failed to conform to those requirements.

(d) The Civil Service Commission may subpoena witnesses and documents, administer oaths, and take testimony. The Civil Service Commission may require compliance with a subpoena by applying to an appropriate court. The Civil Service Commission may delegate its powers to a hearing officer. The hearing officer shall file a written report of the decision, setting forth findings of fact, conclusions of law, and recommended actions. The decision of the hearing officer is reviewable by the Commission in accordance with rules established by the Commission.

(e) The grievance procedure established by the Civil Service Commission is the exclusive procedure for classified employees not covered by a collective

bargaining contract. If the classified employee is covered by a collective bargaining contract that contains a non-exclusive, different procedure, the employee may elect one of the procedures.

(f) If the grievance procedure provided by the collective bargaining contract does not result in a final and enforceable determination, the classified employee may utilize the Civil Service Commission grievance procedure only after completion of the contract procedure.

4.327 Promotion

Except as otherwise provided by a collective bargaining contract, promotion in the classified service shall be by competitive examination. The names of the persons having the 3 highest passing scores in a promotion examination shall be forwarded to the head of the department for promotion selection. The employee must have received a favorable performance appraisal at the last performance rating prior to the selection. The division of Employment Planning shall give notice as provided by rule of the availability of positions in the classified service, and the dates of promotion examinations at least 30 days in advance of any hiring or promotion examination.

Part III - Management and Budget**4.331 Department Created**

The department of Management and Budget is hereby created. The director of the department is the Chief Financial Officer. The director shall be appointed by the CEO and serve at the pleasure of the CEO. Approval by the Commission of the appointment is not required.

4.332 Powers and Duties

The department of Management and Budget has powers and duties to:

(1) Effectuate the provisions of Article V of this Charter;

(2) Implement administrative procedures and practices required by the CEO; and

(3) Supervise and direct the activities of the divisions of the department.

4.333 Assessment and Equalization

(a) The division of Assessment and Equalization is hereby created within the department of Management and Budget. The director of the division has a 6-year

term and may be removed for cause by the CEO with the approval of a majority of the Commissioners serving. The director shall possess qualifications required by law.

(b) The division has powers and duties to:

(1) Assist the County Commission with the equalization of assessments of property subject to taxation in the County in accordance with law;

(2) Prepare reports and other documents required by law; and

(3) Enter into contracts with political subdivisions within the County to provide assessing, tax roll preparation, tax billing, or other related services.

4.334 Purchasing

a) The division of Purchasing is hereby created in the department of Management and Budget.

b) The division has powers and duties to:

1) Establish a central purchasing system; and

2) Manage and control all purchasing activities of the County to insure their cost effectiveness and efficiency.

Part IV - Health**4.341 Department Created**

The department of Health is hereby created.

4.342 Powers and Duties

The department shall maintain health programs, including programs relating to aging, air, land, and water pollution, respiratory diseases, and substance abuse and shall be responsible for the activities provided by law for a medical examiner.

4.343 Environmental Protection

a) The division of Environmental Protection is hereby created in the department of Health. The director of the division shall have had at least 5 years experience in environmental management.

b) The division shall investigate violations of environmental protection laws and ordinances, and may seek civil and criminal penalties provided by law, and may recommend ordinances and rules providing additional protection for the County environment from contamination, impairment, or destruction.

(Article IV - Continued on Page 9)

ARTICLE V FINANCE

(Sections)

5.111 Financial Management Principles

Wayne County shall employ generally accepted principles of accounting, auditing, and reporting, appropriate to local government and as required by law, in the conduct of its financial affairs.

5.112 Fiscal Year

The fiscal year of the County is established by ordinance.

5.113 Independent Audit

(a) An independent external auditor shall be engaged pursuant to contract by the CEO with the approval of a majority of the Commissioners serving. The auditor shall be a certified public accountant. The term of the contract shall be established by the Commission, but the first term shall be for not less than 3 years and the auditor may not serve more than 8 consecutive years. The contract may be terminated for cause by a majority of the Commissioners serving.

(b) The auditor shall audit annually all funds and property of the County and shall report the extent of compliance with Section 5.111. The audit and report shall be completed within 120 days after the fiscal year. Copies of the audit and report shall be transmitted to the Commissioners, the State Treasurer, and as required by ordinance and shall be available for public inspection.

5.121 Budget Preparation and Submittal

The CEO shall prepare and submit a comprehensive budget for the County.

5.122 Policy Statement

At least 9 months before the next fiscal year, the CEO shall transmit the budget policy statement to all agencies to be included in the comprehensive budget. This statement shall estimate the revenues available for appropriation in the next fiscal year and include a budget policy statement.

5.123 Budget Request

At least 6 months before the next fiscal year, all agencies included in the comprehensive budget shall submit to the CEO their budget requests and other information required by the CEO.

5.124 Budget Documents and Transmittal

The CEO shall transmit the comprehensive budget for the County's next

fiscal year to the County Commissioners at least 120 days before the fiscal year. The comprehensive budget shall contain the budget message, budget document, the proposed appropriation ordinance, and other information required by law or ordinance.

5.125 Budget Message

The budget message shall: (1) Describe the proposed financial policy of the County; (2) Indicate the important features of the budget, including major changes; (3) Explain the budget in fiscal and program terms; (4) Explain the estimates of revenues and proposed expenditures; (5) Summarize the debt position; (6) Summarize the fiscal data for the 2 prior fiscal years and the current year for each major category of revenue and expenditure; and (7) Include estimates of revenue and expenditures for each major category for the next 5 fiscal years.

5.126 Budget Document

The budget document shall contain information showing: (1) Full costs of each agency by division; (2) Full costs of conducting County functions and operations; (3) Major program goals and objectives; (4) Objects of expenditures, including personnel, fringe benefits, pensions, supplies, materials, rent, travel, and equipment by agency; (5) A statement of estimated revenue; (6) A report of special funds; (7) A statement of expenditures; (8) A debt service statement; (9) A capital outlay statement; (10) A statement on pensions and budget stabilization; and (11) A statement of surplus or deficit.

(a) Statement of Estimated Revenue

The statement of estimated revenue shall include taxes, fees, tolls, special assessments, excises, charges, reimbursements, State grants and contract receipts, federal grants and contract receipts, investment income, all other receipts, and unencumbered balances available for reappropriation. The statement shall include a comparison of estimated revenue by type to revenue by type in the current fiscal year and the prior 2 fiscal years and an explanation of any significant increase or decrease.

(b) Report of Special Funds

The report of special funds shall separately state the revenues and expenditures for the current year and prior 2 fiscal years of funds which can be used only for limited purposes.

(c) Statement of Expenditures

The statement of expenditures shall include: (1) An explanation of

proposed expenditures in sub-unit detail certified by the CEO and as required by law; (2) A comparison of actual expenditures for each sub-unit detail in the current and prior 2 fiscal years; (3) An estimate of projected expenditures for the current and next 3 fiscal years; and (4) An indication of the amount and type of revenue available for each category of expenditure and expected increases or decreases in those revenues.

(d) Debt Service Statement

The debt service statement shall: (1) Describe the current status of any indebtedness issued by the County or a County agency; (2) Describe the present condition of any sinking or debt retirement fund; (3) Describe interest requirements for the next fiscal year; (4) Describe any authorization for debt which has not yet been issued; (5) Contain an accounting of revenue pledged for the retirement of any revenue bonds, including an estimate of those revenues in the current fiscal year and the next 5 fiscal years; and (6) Include certification by the CEO of the level of appropriations required to meet the debt service requirements of the County for the next fiscal year.

(e) Pensions and Budget Stabilization

The statement of pensions and budget stabilization fund shall contain the certification of the CEO with respect to the level of funding required for pensions under the State Constitution and the level of funding required for the budget stabilization fund.

(f) Capital Outlay

The capital outlay statement shall: (1) Provide an informational summary of projected revenues and expenditure for each special purpose capital outlay fund of the County; (2) State the estimated cost of each project upon completion; (3) State appropriations to date for the project; (4) Indicate the estimated annual operating cost for the project and the program utilizing the project, if any; (5) Indicate the source of operating funding for the project and any program utilizing the project for the current year and the next 3 fiscal years; and (6) Contain a 5-year forecast of capital outlay needs.

(g) Surplus or Deficit

The statement of surplus or deficit shall contain an estimate of the surplus or deficit for the current fiscal year in each fund.

(Article V - Continued on Page 11)

ARTICLE V FINANCE — Continued

5.127 Appropriation Ordinance

The proposed appropriation ordinance shall: (1) Incorporate the comprehensive budget in detail consistent with the chart of accounts and budget document; (2) Include appropriate budget execution instructions and establish the transfer and impoundment authority of the CEO; and (3) Include a statement of revenue by type and fund related to each proposed expenditure. The proposed ordinance may not recommend expenditures, including any accumulated deficit, that exceed revenues, including any surplus.

5.131 Appropriation Ordinance Introduced

At least 105 days before the next fiscal year, the County Commission shall

hearings shall be published as required by law.

5.134 Appropriation Ordinance

(a) At least 30 days before the next fiscal year, the County Commission shall adopt an appropriation ordinance. The total of appropriations shall not exceed the revenue estimates certified by the CEO and any increase in revenue raising authority finally adopted. Whenever proposed total expenditures equal total available estimated revenues, a Commissioner proposing an amendment which increases appropriations on final adoption must propose a balancing increase in revenue raising authority or a reduction in other proposed expenditures. The appropriation ordinance shall contain the mandatory appropriation for debt service, pensions, and the budget

mandate to spend.

5.142 Allotments

On or before the first day of the fiscal year, the CEO shall establish a schedule of periodic allotments for the fiscal year. The CEO may revise the allotments from time to time. The allotments are binding on agencies included in the comprehensive budget and shall not be exceeded.

5.143 Disbursement Procedure

An expenditure may be made and a contractual obligation incurred only if an unencumbered and allotted appropriation is available. An expenditure made or obligation incurred in violation of this section is void. The Chief Financial Officer shall maintain an appropriations and allotments ledger, including a record of encumbrances. The CEO, in accordance with this Charter and as provided by law, shall establish a system of accounts and specify uniform accounting procedures and procedures for the expenditures of funds. Payments shall be made by the Treasurer only if authorized by the Chief Financial Officer and only if funds are available for the expenditure.

5.144 Reports to the County Commission

The CEO shall file a written report with the Commission on the financial condition of the County at least quarterly. The report shall include:

- (1) Expenditures and encumbrances since the prior report and year-to-date for each appropriation;
- (2) Any revision of allotments made by the CEO;
- (3) Actual revenue receipts by type, indicating variances from the revenue estimates contained in the comprehensive budget;
- (4) Unencumbered balances in appropriations and the current allotment schedule;
- (5) Statement of actions taken to comply with recommendations in audit reports; and
- (6) Additional information required by ordinance.

5.145 Appropriation Ordinance Amendments

The Commission may amend the appropriation ordinance. An amendment to increase appropriations may be made only if sufficient unappropriated revenue is available.

(Article V - Continued on Page 12)



Citizen expression from Detroit.

introduce the proposed appropriation ordinance.

5.132 Hearings

At least 30 days before the next fiscal year, the County Commission shall complete hearings on the budget. The Commission shall afford an opportunity for persons authorized by law to testify. The Commission may direct the CEO to submit additional information concerning the comprehensive budget.

5.133 Public Hearings

At least 75 days before the next fiscal year, the County Commission shall hold at least 2 public hearings to receive citizen testimony. Notice of these

stabilization fund certified by the CEO, shall contain budget execution instructions, and shall establish the transfer and impoundment authority of the CEO. The format of the appropriation ordinance shall be consistent with the format of the CEO's proposed appropriation ordinance.

(b) An appropriation contained in the appropriation ordinance constitutes a determination by the County Commission that the appropriation is a serviceable level of funding.

5.141 Budget Execution

Expenditures may be made only if authorized. An appropriation is not a

ARTICLE V FINANCE — Continued

5.146 Budget Reductions

If the CEO certifies to the Commission a reduction in estimated revenue of any type that would cause an expenditure of an approved appropriation to exceed the available revenue and submits a proposed appropriation reduction, the Commission must reduce appropriations to avoid the deficit. If the Commission fails to amend the appropriation ordinance within 30 days after the certification of the reduced revenue, the requested appropriation reduction submitted by the CEO takes effect.

5.147 Transfers and Impoundments

Transfers among appropriations and impoundments of appropriations may only be made in accordance with the appropriation ordinance as adopted or amended.

5.148 Program Review

The Commission, upon recommendation of the CEO, shall establish a schedule requiring every County operation or function to have a program review at least every 4 years. The CEO shall conduct the program review and submit a report of each program review to the Commissioners. The program review shall analyze the necessity and cost effectiveness of the operation or function and include recommended

changes, including expansion, elimination, or alterations of the operation or function.

5.151 Comprehensive Annual Report

Within 120 days after each fiscal year, the final comprehensive annual financial report, adhering to the accounting and reporting standards required by law or this Charter, and certified by the independent auditor, shall be transmitted to the Commission and the State Treasurer.

5.161 Budget Stabilization Fund

A separate budget stabilization fund is created. Except as otherwise provided by law or this Charter, appropriations to the fund may be made for any fiscal year. Appropriations from the fund may be made as provided by law. If the growth in general-purpose, general-fund revenues exceeds growth in the price index specified by ordinance, the CEO may recommend to the Commission appropriations to the budget stabilization fund not to exceed 50% of that excess growth.

5.171 Budget Deficits

If expenditures exceed revenues in

any fiscal year, the CEO shall submit a specific 5-year plan for short-term financial recovery and long-term financial stability to the Governor and the Legislature prior to the adoption of the next annual budget. The 5-year plan shall include those items required by law, the Governor, or the Legislature.

5.172 Debt Limit and Borrowing Authority

The debt limit of the County shall be as provided by law. The County may borrow in accordance with law.

5.181 Taxing Authority

(a) The County may by ordinance levy and collect any tax, fee, rent, toll, or excise authorized by law. The County may levy an ad valorem property tax not in excess of 1% of the State equalized valuation of the taxable property within the County.

(b) The County is authorized to levy an ad valorem property tax not to exceed 6.07 mills. As provided by law, the 6.07 mills is a transfer of the millage allocated to the County from the 15 mill limitation authorized by Article IX, Section 6 of the Constitution. This section does not authorize an increase in rate of taxation as defined by Article IX, Section 31 of the Constitution.

(c) An increase in the authorization may be approved by the voters of the County for a period of not more than 20 years provided the increase does not produce a total authorization of more than 10 mills.

(d) The County may impose taxes without limitation as to rate or amount for the payment of principal and interest on bonds or evidences of indebtedness approved by the voters.

5.182 Net Limitation Tax Rate

As provided by law, the net limitation tax rate to be allocated to other taxing units in the county is 8.93 mills. The net limitation tax rate is from the 15 mill limitation authorized by Article IX, Section 6 of the Constitution. The County Tax Allocation Board shall meet annually, as required by law, to allocate the net limitation tax rate. As provided by Article IX, Section 31 of the Constitution, the net limitation tax rate shall not be increased without a vote of the people.

5.191 General Provision

Failure to meet the deadline prescribed by this article does not invalidate a duly enacted appropriation ordinance.



The Charter should provide...

ARTICLE VI RETIREMENT

(Sections)

6.111 Retirement System

The Wayne County Employees Retirement System created by ordinance is continued for the purpose of providing retirement income to eligible employees and survivor benefits. The County Commission may amend the ordinance, but an amendment shall not impair the accrued rights or benefits of any employee, retired employee, or survivor beneficiary.

6.112 Retirement Commission

The Retirement Commission is composed of 8 members: The CEO or the designee of the CEO, the chairperson of the County Commission, and 6 elected members. The members must be residents of Wayne County. Four members shall be active employees elected by active employees of the County in the manner provided by ordi-

nance and 2 members shall be retired employees elected by retired employees of the County in the manner provided by ordinance. The term of the elected members is 4 years. The Retirement Commission shall administer and manage the Retirement System. The costs of administration and management of the Retirement System shall be paid from the investment earnings of the Retirement System.

6.113 Financial Management

The financial objective of the Retirement System is to establish and receive contributions each fiscal year which, as a percentage of active member payroll, are designed to remain approximately level from year to year. Specifically, contributions shall be sufficient to (i) cover fully costs allocated to the current year by the actuarial funding method, and (ii) liquidate over a period of years the unfunded costs allocated to

prior years by the actuarial funding method. The period of years used in the application of item (ii) shall not exceed 35 years for unfunded amounts in existence December 1, 1982, 25 years for unfunded amounts resulting from benefit changes effective on or after December 1, 1982, and 15 years for experience gains and losses during years ending after November 30, 1981. Contributions made after November 30, 1981, which are in excess of the minimum requirement, may be used to reduce contribution requirements in a subsequent fiscal year. The actuarial funding method must produce contribution requirements which are not less than those produced by the individual-entry-age-normal-cost-actuarial method.

6.114 Employment of Actuary

The actuary employed by the Retirement System must have 5 years experience as a practicing actuary.

ARTICLE VII

SPECIFIC POWERS & PROVISIONS

7.111 Inter-Governmental Contracts

(a) The CEO with the approval of the County Commission may:

(1) Enter into any intergovernmental contract which is not specifically prohibited by law.

(2) Join, establish, or form with any other governmental unit an intergovernmental district or authority for the purpose of performing a public function or service, which each is authorized to perform separately, the performance of which is not prohibited.

(3) Accept, upon mutually agreed conditions, the transfer of performance of any municipal function or service from any governmental unit wholly or partially within the County, if the performance of that function or service by the County is not specifically prohibited by law, and if the function or service is offered on a County-wide basis.

(4) Provide by contract services or functions in any political sub-division of the County with the agreement of the legislative body of that sub-division and with approval of the contract by the Commission. The cost of services or functions provided to a political sub-division of the County, but not provided County-wide, shall be paid by the political sub-division in which the services or functions are performed. The revenues collected for the contracted services or functions shall be

used first to pay for the contracted services.

(b) This section applies to all contracts of the County, including those to be performed by departments headed by elected officers.

7.112 Initiative, Referendum and Recall

(a) The people of Wayne County reserve the power to amend and revise this Charter, the power to recall elective officers, and the powers of initiative and referendum.

(b) The scope of these reserved powers are the same as comparable powers under the State Constitution. The procedures for the exercise of these reserved powers may be established by ordinance. In the absence of an ordinance establishing procedures, the procedures provided by law for the exercise of the reserved rights under the State Constitution are applicable. Petitions must be signed by registered voters constituting not less than 10% of the base vote to amend or revise the Charter; not less than 25% of the base vote to recall an elected officer; not less than 8% of the base vote to invoke the initiative; and not less than 5% of the base vote to invoke the referendum. The base vote is the total vote cast in the County or the affected district for all candidates for Governor at the last gubernatorial election. The petitions must be filed with the County Clerk.

7.113 Public Meetings

Meetings of the Commission and all other County boards and commissions are open to the public as provided by law.

7.114 Freedom of Information

County records are public and open to inspection as provided by law.

7.115 Restrictions on Appointments and Employment

(a) An elected County officer may not be hired or appointed to a compensated County position until at least one year has passed after completion of the term of office. This restriction does not apply to officers elected prior to the effective date of this Charter.

(b) A member of an appointed board or commission may not be appointed or hired to a compensated position created by that board or commission until at least one year has passed after the completion of the term of office.

7.116 Penalties for Violation

The County Commission may provide penalties for violations of this Charter or any ordinance.

(Article VII - Continued on Page 14)

ARTICLE VII SPECIFIC POWERS & PROVISIONS — Continued

7.117 Applicability of Article V of This Charter

Provisions of Article V apply to the Road Commission unless the Road Commission is specifically exempted.

7.118 Home Rule Unaffected

This Charter does not affect the exercise of home rule powers of governmental units within the County.

7.119 Public Utilities

The acquisition, operation, and sale of public utility facilities by the County for furnishing light, heat, or power is subject to the restrictions imposed on cities and villages by the State Constitution and applicable law.

7.120 Drainage Boards

Unless otherwise required by law,

each County drainage board shall consist of the Drain Commissioner and 2 members of the County Commission.

7.121 Severability

If any provision of this Charter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Charter.

ARTICLE VIII TRANSITIONAL PROVISIONS

(Sections)

8.111 Ordinances Continued

Ordinances, resolutions, rules and regulations in force when this Charter takes effect, which are not inconsistent with this Charter, remain effective until amended or repealed.

8.112 Laws Continued

Except as otherwise provided by this Charter, the general statutes and local acts of this State regarding counties and County officers continue in effect.

8.113 Succession of County Rights

Wayne County, as created and structured under this Charter, succeeds to and is vested with the property, real and personal, money, rights, credits and effects, and the records, files, books, and papers belonging to the County as it formerly existed. Neither the rights nor the liabilities existing when it becomes a Home Rule County, nor a suit or prosecution of any kind commenced before, and continuing at the time it becomes a Home Rule County is, in any manner, affected by the change, but is to continue, stand, or progress as if the change had not been made. The debts and liabilities of the County, the authorized tax rates approved by the voters, and taxes and assessments levied and uncollected at the time of the change remain effective until they expire, are discharged, or collected the same as if the change to home rule had not been made.

8.114 Retirement Commission

The Wayne County Retirement Commission continues to hold office until the members of the new Retirement Commission are elected under Section 6.112.

8.115 Transition by County Commission

The County Commission shall provide by ordinance or resolution for the

orderly transition of County government not inconsistent with this Charter.

8.116 Civil Service Rights

This Charter does not affect any vested rights or vested status of any Wayne County employee under the civil service system in effect prior to the effective date of the Charter.

8.117 Continuity of Government

(a) Departments headed by elected officers are established on the effective date of this Charter.

(b) Departments specifically created under Chapter 3 of Article IV are established six months after the effective date of this Charter or on the date prescribed by order of the CEO, whichever is earlier. When established, the prior entity exercising the same powers and duties is abolished.

(c) Other agencies, departments, instrumentalities, boards, commissions, and other administrative units of the County existing on the date this Charter becomes effective shall continue until displaced in accordance with a reorganization plan.

(d) The Board of Auditors is abolished on the effective date of this Charter.

8.118 Temporary Continuance of Positions

Persons holding unclassified positions in agencies, departments, instrumentalities, boards, commissions, and other administrative units of the County on the date this Charter becomes effective continue to hold those positions until successors are appointed in accordance with this Charter, the entity in which the position is held is abolished or displaced, or the CEO removes the person, whichever is earlier.

8.119 Effective Date

This Charter takes effect on January

1, 1983 but Sections 8.120 and 8.121 are effective upon adoption of this Charter.

8.120 Apportionment for Commissioners and Elections

(a) The existing County apportionment commission shall provide the apportionment plan as provided by law for the initial election of County Commissioners under this Charter in the 1982 primary and general elections for the Commission established under this Charter.

(b) The County Clerk shall provide, in accordance with law, for the election of all officers elected under this Charter on a district or County-wide basis in the 1982 primary and general elections.

(c) The election of a member of the Board of Auditors shall not be held in November, 1982.

8.121 Transition Planning

The existing County Board of Commissioners shall appropriate sufficient funds to operate a transition office for the persons elected under this Charter in the general election in 1982.

8.122 Elected Officers Continued and Original Terms

(a) The persons holding the offices of Prosecuting Attorney, Sheriff, County Clerk, Treasurer, Register of Deeds, and Drain Commissioner shall be continued in office until the expiration of the terms for which they were elected prior to the effective date of this Charter.

(b) The persons first elected under this Charter to the offices of Prosecuting Attorney, Sheriff, County Clerk, Treasurer, Register of Deeds, and Drain Commissioner shall serve terms of 2 years commencing January 1, 1985 and ending December 31, 1986. Their successors shall be elected for terms of 4 years.

ARTICLE IX SELECTION OF THE CEO

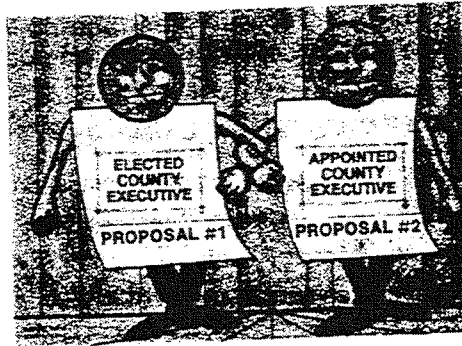
(Sections)

9.111 Elected Chief Executive Officer

(a) The CEO shall be elected at large on a partisan basis for a 4 year term. A candidate for the office of CEO must be a qualified elector of the County at the time of election. If a party candidate nominated in the primary election dies or otherwise becomes unable to be elected, a successor candidate shall be elected in the same manner that a successor candidate is selected for the office of County Clerk.

(b) If the office of CEO becomes vacant, a successor shall be elected at a special election held concurrently with the next regular County general election. The successor shall fill the unexpired term.

(c) State law as to the qualifications and registration of voters, the filing for office by candidates, and the conduct and canvass of county elections for county officers elected under Article IV shall also apply to the office of CEO.



(Sections)

9.111 Appointed Chief Executive Officer

(a) The CEO shall be appointed for a 4 year term by a majority of the County Commissioners serving. The CEO must be a qualified elector of the County at the time of appointment.

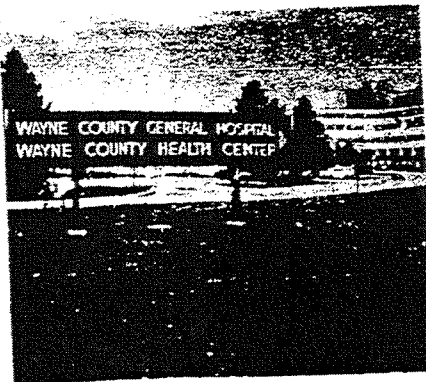
(b) A commissioner or a former commissioner whose service on the County Commission did not terminate more than 2 years previously may not be appointed CEO.

(c) The CEO may be removed for cause by a 2/3 vote of Commissioners serving. Any successor shall be appointed for the unexpired term.

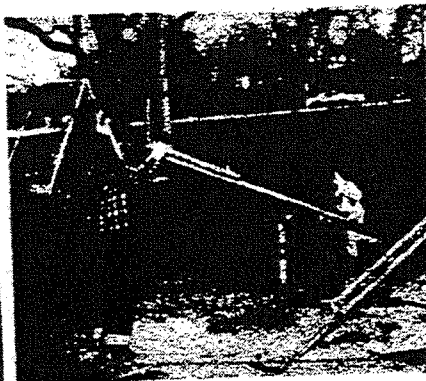
(d) The Commission shall select a Search Committee for the purpose of obtaining and screening candidates for the office of CEO at its first meeting after a vacancy occurs or the Commission has notice that a vacancy may occur. The Commission shall appoint the CEO within 3 months after the selection of the Search Committee.

WHAT IS COUNTY GOVERNMENT?

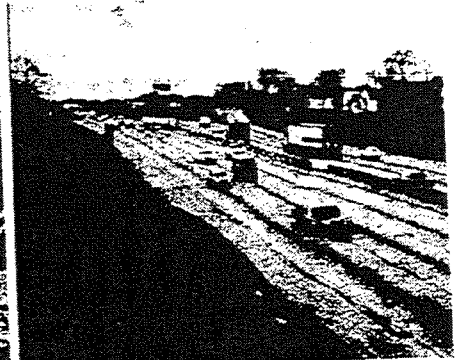
HEALTH PROTECTION



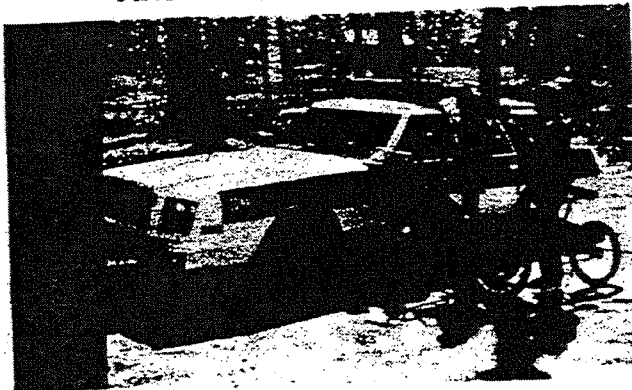
PARKS AND RECREATION FACILITIES



ROAD AND HIGHWAY MAINTENANCE



CRIMINAL JUSTICE AND LAW ENFORCEMENT



OPERATION OF METROPOLITAN AIRPORT

